United States Court of Appeals for the Second Circuit



SUPPLEMENTAL APPENDIX

with offed and

76-6003

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-6003

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, and THE CITY OF NEW YORK,

Plaintiffs-Appellees.

-against-

LOCAL 638...LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 28 JOINT AP-PRENTICESHIP COMMITTEE,

Defendants-Appellants,

SHEET METAL AND AIR CONDITIONING CONTRACTORS' ASSOCIATION OF NEW YORK CITY, INC., etc.,

Defendant

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SECOND CIRCU

LOCAL 28,

Third-Party Plaintiff

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS, Third-Party Defendant.

LOCAL 28 JOINT APPRENTICESHIP COMMITTEE, Fourth-Party Plaintiff,

-against

NEW YORK STATE DIVISION OF HUMAN RIGHTS, Fourth-Party Defendant.

SUPPLEMENT TO THE SECOND JOINT APPENDIX

ROBERT B. FISKE, JR., United States Attorney, Commission.

W. BERNARD RICHLAND. Corporation Counsel, City of New York.

SOL BOGEN, ESQ., Attorney for Attorney for Plaintiff-Appellee, Defendants-Appellants, Local 28 Equal Employment Opportunity and Local 28 Joint Apprenticeship Committee.

ROSENTHAL & GOLDHABER, Attorneys for Attorney for Plaintiff-Appellee, Defendant-Appellant, Local 28 Joint Apprenticeship Committee and Defendant Sheet Metal and Air Conditioning Contractors Association of New York City, Inc.

> LOUIS J. LEFKOWITZ, Attorney General of the State of New York, Attorney for Third and Fourth-Party Defendant New York State Division of Human Rights.

PAGINATION AS IN ORIGINAL COPY

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1740 Extract of Relevant Docket Entries

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, : and THE CLTY OF NEW YORK, · U.S.C.A. NO. Plaintiffs-Appellees, : 76-6003 -against-: CASE NO. 71 LOCAL 638 . . . LOCAL 28 OF THE SHEET

METAL WORKERS' INTERNATIONAL ASSOCIATION, Civ. 2877 LOCAL 23 JOINT APPRENTICESHIP COMMETTEL, : JUDGE WELKER Defendants-Appellants, SHRET APPAL AND AIR-CONDITIONING CONTRAC-TORS' ASSOCIATION OF NEW YORK CITY, INC., etc., Defendants. LOCAL 28, Third-Party Plaintiff, -against-NEW YORK STATE DIVISION OF HUMAN RIGHTS, Third-Party Defendant. LOCAL 28 JOINT APPRENCICESHIP COMMITTEE, Fourth-Party Plaintiff, -against-NEW YORK STATE DIVISION OF HUMAN RIGHTS, Fourth-Party Defendant.

DATE	PROCEEDINGS
July 6, 1976	EEOC Memorandum of Law in Opposition to Local 28 Motion
July 8, 1976	Mcmorandum and Order dated July 7, 1976
Nevember 22, 1976	ELOC Notice of Motion to Amend Order and Judgment dated November 19, 1976
November 22, 1976	Proc Memorandum of Law in Support
January 10, 1977	EEOC Memorandam in Pesponse to Adminic- trator's Report
Jamuary 13, 1977	Ravines Affirmative Action Property Order
January 19, 1977	Order, dated January 17, 1977
February 3, 1977	Local 28 Notice of Motion
February 1, 1977	Local 28 Nerorandum in Support of Kotio
February 1, 1977	City of New York Memorandum of Lew in Opposition to Local 20 Motion
February 1, 1977	Transcript of Bearing before Laff, Addis- intrator, dated March 5, 1976, with Exhibit A
Pebruary 1, 1977	Transcript of Herring before E.C., Administrator, dated December 21, 1976
February 1, 1977	Stipulation dated February 1, 1977 to include documents in supplementary record on appeal

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ULTRED CRESCOS PECENTOS COUPE BOATHERS OF TREES OF SAME YOUR

POUNT PROTOTION OF CONTROL YORK,

Plaintiffs,

- against -

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norica or

: 71 Civ. 2377 (TEV)

LOCAL 23, et al.,

Defendants.

SIRS:

PLEASE THE MOTICE that upon the memorandum of law scientited herewith the plaintiff Equal Papiognant Opportunity Commission will move this Court at a date and time to be set by the Court to review and amend the Order and Judgment dated August 20, 1975 and the Affirmative Action Program and Order entered November 25, 1975.

Pated: How York, New York Neverber 19, 1976.

Yours, etc.,

POTENT B. FIGUR, JR. Builted Etaton Actorios Attorney for Foral Estagment Opportunity Commission

To: Set. MONN. 180. (no den 11 m New York, new York

WILLIAM rorounne, ESQ. Rosenthal & Coldhaber 44 Court Street Brooklya, New York

CORPORATION CONTROL OF THE CITY OF BULL YOUR Hundelpal Entiding Her York, Her York 19007 Attn: Editon Femar Sauver, Esq.

LOUIS LEFROUTEZ
Attorney denoral of the State of New York
2 World Trade denter
How York, The York 10047
Atto: Imminist Tradeove, Esq.

Revised Affirmative Action Program and Order Proposed by EEOC 1750

LC: 4W

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF MAN YORK EQUAL LEFLOYERNT OPPOSTURITY COMMISSION, and The CITY OF NEW YORK, Plaintiffs. -against-LOCAL 638. . . LOCAL 26 OF THE SPEET PUTAL WORKERS' LOCAL 26 OF THE SELET FUTAL VORKERS'
LIFELEATTOINE SECTATION LOCAL 23
JOINT APPLICATIONSHIP CONSTITUTE.
SHELT HOTTLE AND AIR-CONDITIONING
CONDUCTORS' ASSOCIATION OF ANY YORK CITY, I.C., etc., Defendants. : 71 Civ. 2077 (NTM) LOCAL 28. : REVISID ATTITUM-Third-Party Flaintiff, TIVE ACTION INC--against-HIM YORK STATE DIVISION OF BUMAN RIGHTS, : Third-Party Defendant. LOCAL 23 JOINT APPRENTICESQUE CONSULTEE, : Fourth-Party Plaintiff, : -against-HEW YORK STATE DIVISION OF MUMBAN RICHTS, : Fourth-Party Defendant.

PLVISED AFFIRMATIVE ACTION PROGRAM

Introduction

1. Upon the rotion of the plaintiffs and the State Division of Ruman Rights (the 'State Division") this Revised Affirmative Action Program ("Revised Program") is adopted after reconsideration and review of the remedial provisions of the Decision and Order dated July 18, 1975, the Order and Judgment dated August 28, 1975 and entered on September 2, 1975 ("Order and Judgment"), the Affirmative

Action Program entered November 25, 1975, and the Court of Appeals decision dated March 6, 1976 in light of the present changed working and employment conditions in the sheetmetal industry in New York City, including the present severe and widespread unemployment in the industry. The goal of this Revised Program is to assure that in light of these changed circumstances and conditions the non-white* membership in local Union No. 28 of the Sheet Metal Workers' International Association ("Local 26") reaches a minimum level of 29% by July 1, 1982; to assure that substantial and regular progress is rade toward this goal in each year prior to 1982; and to assure that all members and apprentices of Local 28 share equitably in all available employment opportunities in the industry.

2. For the purpose of reaching the above goal of 29% by July 1, 1952 this Revised Program establishes the following interim percentage goals for the nonwhite respectable of Local 25:

July	1,	1977	8%
July	1,	1978	11%
July	1,	1979	15%
July	1,	1980	19%
July	1,	1951	24%

Each of the above percentages shall be reasured against the total membership of Local Zo as of each interim goal date, respectively, and the final goal date. For the purpose of Leasurement, total membership shall include (a) all journeyman members, (b) all pensioners who, while on pensioner

^{* &}quot;Mon-white" as used in the Mevised Program means black and Spanish sugmented individuals.

^{** &}quot;Pensioner" as used in the Fevised Program means any Individual via receives benefits from the Local 25 pension program.

status, have been coployed as sheetmental workers within the three years prior to the goal-date which is being measured, (c) all numbers or participents in the Local 23 Apprentice Program ("Apprentice Program"), and (d) all individuals who (i) have been offered admission to and membership in Local 2. but have exercised their option, pursuant to Paragraph 16 of the Revised Program or pursuant to a parallel policy adopted by Local 23, to defer such adaission and not bership and (ii) at the tire of measurement have continued to exercise the aforesaid deferment option. The parties to this action and the Admisurator are to implement this Revised Program so that these interim goals and the final goal shall lu attain ed. At least once every six contas, the Administrator sholl review the progress toward the attainment of these goals and shall take any such action as he is expowered to take under the Order and Judgment and which is recessary to assure their achievement. In addition, upon his own action or the c of reparty, the Administrator is authorized and directed to periodically review the working and employment conditions in the sheetword industry in law York City to determine we other it is feasible and practical to increase the interin goals or reduce the the period within which any interior goal or the final goal shall be not by Local 20 and the JAC. It is the express purpose and intent of this Pevised Program to autifathe goal of 2%, nen-white her bership in Local 23 and the Apprentice Program at the earliest procticable tire.

- 3. Admission to Journavian membership in Local 26 shall be attaited only through the following procedures:
 - a) Successful completion of a 'hands-on'
 jewneymen test administered parausat to
 Paragraphs 5 through 11;

- b) establishment of proof of the required experience in the sheetmetal trade pursuant to Paragraph 12; or
- c) successful corpletion of the Local 20 Apprentice Program; or
- d) transfer in accordance with the Sheet Metal Workers' International Union Constitution and Ritual; or
- e) organization of non-union shops.
- 4. Hembership in the Apprentice Program shall be obtained only through the following procedures:
 - a) successful completion of an apprentice aptitute test, as set forth in Paragraphs 18-23; or
 - b) entry with advanced standing as set Torch in Paragraphs 29 through 32.

Ashington to Journey a Status

- 5. Local 23 shell administer a validated, non-discriminatory, 'hands-on' journeyman's test under the overall supervision and approval of the Administrator to later than may 1, 1977 and at least once a year thereafter at a date, the and place to be set by the Administrator. The Administrator, after consultation with the parties, may apply to the Court to decrease the frequency of the tests consistent with the requirements of the interim goals set forth in Paragraph 2.
- 6. The 'hands-on' journeyman's tests administered pursuant to Paragraph 5 shall be professionally developed and validated in accordance with LEDC Guidelines. With respect to the test to be administered by May 1, 1977 as required in paragraph 5, on or before becember 31, 1976, Local 25 shall furnish connect for the parties and the Accimian stor with (i) a copy of a report demonstrating the validity of the test

LC:slc 11-154 and (ii) a copy of the test to be administered, provided that counsel for the parties and the Administrator shall not distribute or disclose the contents of the test to any individual or organization except for the purpose of professional validation thereof. With respect to all subsequent tests administered pursuant to paragraph 5, Local 28 shall provide the Administrator and counsel for the parties with the information and naterial described in subparagraphs (i) and (ii) herein at least four weeks prior to the scheduled date of each test.

- 7. All qualified applicants shall be eligible to take the 'hands-on' journeyman's test specified in this Revised Program. A qualified applicant is defined as follows: any person who
 - a) has or will have attained the are of18 by the date of the test, and
 - b) is a citizen or lawful permanent resident alien legally entitled to work in the United States, and
 - c) has resided in New York City or the counties of Westchester (N.Y.) Dassau (N.Y.) Suffolk (N.Y.), Passaic (P.J.)

 Bergen (N.J.) Hudson (N.J.) Union (N.J.) or Essex (N.J.) for six (6) months prior to the filing of an application, and
 - d) has one year of sheet metal work experience including but not limited to employment as a member in any branch of Local 400 of the Sheet Metal Workers International Association, sheet metal experience in the Armed Forces, or vocational education or training related to the shills of a journeyman sheet metal worker.

Persons presently registered or recently registered in the Local 28 Apprentice Program or any other recognized approprietice program at Clinated with the Sheet Betal Verbers!

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International Association are not eligible.

- 8. Subject to the approval of the Administrator, Local 28 shall develop a standardized application for a the 'hands-on' journeyman's test. Such form shall include only the following:
 - a) provisions for the name, address,
 tolephone number, social security
 number, citizenship or lawful resident
 alien status, residency, record of
 convictions, age, sex and race or ethnic
 identification of the applicant (with
 a notation that information reparding
 race or ethnic identification is required
 solely for the purpose of complicate with
 the court order herein and the resulctions
 of the United States Equal Employeme
 Opportunity Commission), and provious
 sheet metal experience.
 - b) information regarding the elicitiality requirements, fee, date, time, location, and nature of the 'hands-on' journeyman's test.
 - 9. Local 25 shall make available an application for the 'hands-on' journey and's test and a short description of the nature of the test in the following manner:
 - a) at the offices of Local 2d;
 - b) by smil in response to inquiries and requests sade by rail;
 - e) in bulk to plaintiffs, the City

 bepartment of Employment, the New

 York State Employment Service, service, sometiment and Training Program, Inc., (1) at

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Back, and the other governmental or community agencies listed in Appendix A as assended from time to time.

Completed applications for the test shall be accepted by mell or delivery in person at the offices of Local 28. Local 28 may establish, with the approval of the Administrator, a suitable cut-off date for the acceptance of applications. Local 28 may establish a fee for the taking of the 'handa-on' journaymen's test consistent with the cost of administrator journaymen's test consistent with the cost of administrator such a test. Such fee shall be provisionable, \$75.50. Local 28 may apply to the Administrator for an increase in this fee upon good cause shown. Applicants shall be informed, in writing, as to the place of examination with instructions as to how to reach the place and/or a map indicating it; location.

product by a part of Lampiners consisting of three surfers backed by a part of Lampiners consisting of three surfers backed depths in sheet setal. Said Board shall be comprised of a representative case on by local 23, a representative chosen by the Administrator, and a representative chosen by the planning and the seate blotsion. Taid Board shall set by rejority vote and shall employ the passing grade level decateposi parameter to the validation processors set forth in farm maph o. All applicants shall be revised of their status by first class that within 30 days of the test.

Applicants the fail the test shall be added of their possible eliminity for advances shall be added of their possible eliminity for advances shall be added of Program or pursuant to Parameters 29-32 of Device 6.

Program or pursuant to a possible policy acopted by local 21 and/or the board 25 defint Apprentice Countres ("U.C").

11. (a) All qualified applie has vao plas the test and me physically fit to perform sheet retail voil a

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be admitted to journeyman status in Local 28 within 60 days of the test unless the applicant elects to defer admission

of the test unless the applicant elects to defer addission pursuant to Paragraph 16, or pursuant to a parallel policy adopted by Local 25.

(b) To the best of their ability the parties and the Administrator shall endeavor to set forth on the application forms the nost accurate estimate of the ciploy, one opportunities available in the industry.

12. Community January 1, 1977 there shall be established a program for addisation to Local 23 journay and a abersalp of non-whites who have had four years experience, obtained in the United States or elsewhere, in sheet netal work or exployment responsibly related or similar to sheet netal work, including a perience in the Arand Forces, or vectorish temining related to the shills of a sheet total worker. Terrons eligible for addission under this program must,

- a) be a resident of New York City,
 or the countres of Emsoru (H.Y.)
 Suffolk (H.Y.), Vestebester (H.Y.),
 Bergen (H.J.), Passaie (H.J.), Masez (H.J.)
 Union (H.J.) or Fudeon (H.J.) for
 six (6) wonths prior to application;
 and
- b) be age of 15 or over; and
- c) be physicially fit to perform about twial work; and

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- d) establish to the satisfaction of a majority of a board of three members knowledgable in sheet metal work, comprised of a representative chosen by Local 28, a representative chosen by the Administrator, and a representative chosen tive chosen by the plaintiffs and the state Division that the applicant has the requisite sheet metal experience; and
- e) be a citizen or lawful permanent resident alien legally entitled to work in the United States.

The Administrator, after due consultation with all the parties, shall establish procedures for application to this program, for investigation and varification of the criteria act forth in subparagraphs (a) through (e), and for the timing and conditions of admission. Appropriate publicity for the program shall be undertaken at the direction and with the approval of the Administrator.

eligible for admission to journey an membership in Local 23 persuant to Paragraphs 5 through 12 or Paragraph 31 (c) of this Revised Programmay request of Local 23's Executive Board that the Local 25 initiation fee be reduced paragraph to the provisions of Paragraph 22(d) of the Order and Jedgmann. Within 5 days of receipt of such application, the Local 25 Executive Board shall render a decision on the raplication in writing and notify the applicant, the Administrator and the parties of the disposition of the application (1) notification to the Administrator and the parties shall include the more and address of the applicant). If such application is denied in whole or in part, or is not acted

upon within five days of its receipt by the Executive loand of Local 23, an application may be made to the Administrator who shall either grant or deny the request in writing after duly considering all the factors set forth in Paraguaph 22(d) of the Order and Judgment. In considering such an application the Administrator may require the subtission of such information, documents, or other data from either Local 25 or the applicant as me deeps necessary.

- b) Upon proper application a non-mile eligible for edvission to journeyman membership in Local 20 pursuant to Paragraphs 5 through 12 or Paragraph 31(e) may as quest of the Local 25 Especitive Soard that payment of the Local 23 initiation for cornence with employment and be payable on a pro reced basis, each payment not execusin 10% of the nee pay check, and payable only dering periods of a ployment until the fee is paid. Within 5 days of the . cuint of theh application the Local 25 Impoutive Fourt shall render a decasten on the application in writing and notify the applicant, the Administrator and all parties of the disposition of the application (the notification to the A binistrator and the parties shall include the applicant's have end madress). If such application is denied in vaole or in part or not acted mean within 5 days of its receipt by the asequative heard on Local 23, an application may be rade to the / admistrator who shall either grant or deay the condication in writing. The decisions of the lineutive board of Total 20 and the Administrator shall be made having fully considered the firmedal circussinges of the openic at.
 - 34. a) It may tire after an amplication marsuant to Paragraph 13 has been pending with the Administre or for more than a days a non-white eligible for admission to journeyman perbership in Local 25 pursuant to Taragraph 5 through 12 or Paragraph 31(e) of this Revisca Program shall

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be admitted conditionally to journeyman membership upon payment of \$56 dollars and one month's dues pending the determination of the Administrator which shall be made within 50 days of the date of the application to the Administrator. During such conditional membership an applicant will be entitled to all the rights and privileges of regular journeyman membership.

b) If a conditional member is terrarated without becoming a regular journeyman member of Local 25 has shall be entitled to a return of any dues paid in advance for any month in which he was not employed and, if he was not employed during his conditional membership, he shall also be entitled to a return of any payment made toward the initiation fee.

15. The granting of any application parameter Foragraph 13 shall not divinish any rights or privileges recruing to journey an temberahip in Local 23.

Taragraphs 5 whrough 11 shall be permitted to defer such combasion for up to toolve meaths from the time he is first entitled to be admitted. During such period, a person was has elected to defer may apply to the Administrator for further accorded to defer may apply to the Administrator for cause, the Administrator may continue such deferment for such time as the Administrator may continue such deferment for such time as the Administrator shall determine. If an applicant invokes his right of deferral he shall be admitted, on the name terms and conditions as he was previously entitled, within 5 days of written notice to Local 25 that he seeks to be admitted.

17. Local Zo shall issue "pensits" or "identification slips" only with the express written consent of the Administrator, and pursuant to Paragraph 22(f) of the order and Judgment.

Apprentice Pregram

of four years duration or less. The terms and conditions of the apprendice program shall be as set forth in the Collective Bargaining Agreement ("Standard Form of Union Agreement . . . between Local 28 . . . and Sheet Metal Contractors"), the Local 28 Joint Apprendiceship Trust and Indenture, and the rules and regulations thereunder except as modificably the Order and Judgment, the provisions of this Revised Francis, or order of the Administrator pursuant to his powers under the Order and Judgment and this Revised Program.

apprentices by Vebruary 1977 and another class of apprentices (in a number to be determined as set forth below) by July 1977. The JAC shall industry two classes of apprentices each year up to and including July 1982; the classes shall be indectured in February and July of each year. Then consideration of the goals of this revised Program, the evoitability of exployment opportunities in the industry, and after consultation with the parties and 60 days before attained as in indectured, the Administrator shall determine the number of apprentices to be indeptured shall include the apprentices addition with advanced standing.

- 20. a) Scalarity aming apprentices shall not be a criterion for employment, and apprentices may be recoved for employment where recessary and feasible.
- b) On jeb sites or shops emboying four or nore jouchers a sheet tenal work as, apprentices chail to assigned for apprentice for every four journemen, except that upon an

application by the JAC, Local 28, or an employer end a subsequent finding by the Administrator that said ratio on a particular job sine or shop is not feasible or creates a safety or health hazard this ratio shall not apply to that job site or shop. Every two weeks, the Contractors Association shall submit to the Administrator and the parties a Manpower Control Report setting forth on a weekly basis, the uniber of journeymen and apprentices employed by Local 29 contractors on each job site of shop.

- c) The JAC shall make every effort to provide apprentices with classroom instruction, including eventions and Securdays where necessary, daving periods of rescribing in, and shall or the such hours toward fulfillment of apprentice ship requirements. The JAC may authorize the accelerated advancement or graduation of any apprentice as it down proper.
- the JAC, appromises shall have the right to solicit crologment directly through commences in signed agreement with board 20. An appromises the secures employment through this direct solicitation method shall intediately inform the JAC in writing of the mass of the employer, the date of ambient corthe address or the jeb site or show, and the empacted 1 area of epicotemic or the jeb site or show, and the empacted 1 area of epicotemic and the mention of such employment the exprestice shall so information JAC.
- 21. Upon successful completion of the Appropries.

 Program, appropries a shall be promotly addicted to tall
 journeyour probability upon payment of the balance doe of the
 initiation fee, if any, which upon application to the Local
 23 Executive Board may be paid on an installment basis for
 good cause shawn, and subject to the procedures contained is
 Paragraph 13.

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shall be made available to and accepted from any qualified condidate. A qualified candidate is defined as follows: any person who is deemed physically fit for sheet metal work and who has or will have attained the age of 18 years by the data of indenture of the next scheduled apprentice class and who is not older than 25 years of age (for veterans of active milliousy duty the age limit is extended one year for each year of such duty up to the age of 30) and for non-whites not over the age of 35 applying for advanced standing, and who is a citizen or permanent resident alien.

23. With the approval of the Administrator, JAC shall develop a standardized application form for the Apprentice Program. The application form shall include information about the date of the next class of apprentices to be indentuned, and shall require only the following information of the applicant:

- a) Home, address and telephone number;
- b) Birth date and age;
- c) Social Security number;
- d) Ement of education;
- e) Sex;
- f) Race or athric classification (with a notation that this information is resulted solely for the purposes of compliance with federal anti-discrimination gratures);
- g) military service;
- h) convictions and pending criminal charges.
- Citizenship or lawful permanent resident alien status.

shall be available at the offices of the JAC during normal business hours and at the offices of the organizations listed in Appendix A at least 60 days before an evanization. Application forms shall be made available by mail upon written reducat. Completed applications shall be accepted in person or by mail at the offices of the JAC. There shall be a filling fee of no more than \$15.00. Application forms shall be rade freely available to any governmental employers office are minority community organizations not listed in Appendix A upon request. The time for filing application for a particular apprentice test may be closed by the JAC at a reasonable time (not to encode three weeks) before the date of the enamination.

in May, 1977 and at least once yearly thereafter at a detaining and location approved by the Administrator. The test shall consist of either one of the following: (a) a reclamination comprehension test, which has been validated under PMOC Cuidelines, similar in substance and scope to the recentable apparatusly relations test, which has been validated while a spatial relations test, which has been validated while EMOC Cuidelines, similar in substance and scope to the example EMOC Cuidelines, similar in substance and scope to the spatial relations test given in Secreber 1975.

pive a lawic 'read and follow directions' test which has been validated under PEOC Guidelines and is designed to ascertain an applicant' ability to master and understant those written and verbal instructions, directions, and over communications necessary to participate in the American Program at the first year level; upon good cause slown, to desinistrator shall authorize the administration of our test as part of the apprentice ap titude test. There is it he professionally developed and validated a qualifying seems.

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on the "read and follow directions" test designed to reflect the minimum ability necessary to participate in the Apprentice Program at the first year level. The JAC may also apply to the Administrator to give a math test as part of the apprentice aptitude test, and such test may be given upon good cause shown. Such math test shall be professionally developed and validated (pursuant to EEOC Guidelines) as to content and qualifying score in such manner as to reflect the minimum ability necessary to participate in the Apprentics. Program at the first year level.

- test which is to be administered in May, 1977, on or below.

 March 1, 1977, the JAC shall furnish counsel for the parties and the Administrator with (i) a copy of a report deconstration the validity of the test and (ii) a copy of the test to be administered, provided that counsel for the parties and the Administrator shall not discribute or disclose the contents of the test to any individual or organization except for the purpose of validation thereof. With respect to all subsequent tests administered pursuant to this paragraph, the JAC shall provide the Administrator and counsel for the parties with the information and paragraph requested in subparagraphs.

 (i) and (ii) herein at least four weeks prior to the scar-cule date of each test.
- 26. Within three weeks of the administration of an apprentice opticade test, JAC shall provide the Administrator and all parties with:
 - a) the names, race identification, raveccores and rank of all candidates on all tests; and

- b) the bean and median scores on all tests of all identifiable racial and ethnic groups among the candidates.
- obligations under Paragraphs 19, apprentices chosen by means of the apprentice aptitude test shall be selected on the basis of the ranking of scores (highest first) received on the mechanical comprehension test or the spatial relations test (depending on which test is administered) among all eligible qualified candidates. If a "read and follow directions test and/or a math test is administer d pursuant to paragraph 25, then ranking and selection based upon scores on the mechanical comprehension test or the spatial relations test shall be from among those applicants who meet or exceed the qualifying score on the "read and follow directions" test and/or the math test.
- may be required to appear for orientation and a physical examination prior to being indentured. The cost of physical examinations are to be borne one half by successful applicants and one half by the JAC. Additional persons may be invited to orientation and a physical examination by Local 28 JAC if that appears desirable. Persons selected in accordance with the above procedures shall be indentured as apprentices unless such indenturing is valved by them, or they are certified physically unable to perform sheet retal work by a medical practitioner licensed in New York State.

Advanced Amerintheen

codures for the adotation and advanced placement in the Apprentice Program of non-white apprentices who have expecience in sheet metal work or trade education but cannot

perform at journeyman level. Applicants for advanced placement shall have at least six booths experience in sheet metal work or trade education, be physically fit and shall be not less than 18 years old or more than 35 years old by the date of indenture of the next scheduled apprentice class.

- "Coordinator") shall evaluate the experience of all applicants for advanced standing and shall make placement of appropriate grade level. The grade level assigned shall be conditional for a period to be determined by the Coordinator, not exceeding three months, based upon classroom work and on the job performance. Applicants who challenge the grade level assigned shall be advised of their right to appeal to the Administrator.
- maker of advanced apprentices to be admitted from the list resulting from each test, based upon the needs of the true tice Program at any fiven time and the number of applicants elicible for advanced standing as certified by the Coordinator.
- b) Apprentices who neet the requirements of Paragraph 32 shall be selected for advanced standing in the following number:
- tice aptitude emanination qualifies them for acceptance into the Apprentice Program parament to Paragraph 19 stall be selected in accordance with their ranking and additionable with advanced standing, subject to the number determination the Administrator ourseast to subdivision (a) of this caragraph.

(11) if there are insufficient apprentices who qualify for advanced standing selected by the procedure contained in subdivision (b)(i) of this paragraph to satisfy the number determined by the Administrator, additional apprentices to reach this number shall be selected in ranked order, from those who are over 75 years of are and whose score on the apprentice aptitude examination places them below the number otherwise selected pursuant to Paragraph 19.

- c) The number of apprentices admitted with advanced standing under subdivision (1)(i) of this parameters shall be included in the number of apprentices selected parameter to Parameter 19. The number of apprentices admitted with advanced standing under subdivision (b)(ii) of this parameter shall not be included in the number of apprentices selected present to Parameter 19.
- d) An advanced apprentice shall be estitled to all rights, privileges and other benefits including work referral, pay, instruction, and supervision accruing to regular apprentices at the same level of training.
- e) Apprentices admitted with advanced stending pursuant to Paragraphs 29 through 31 who successfully complete the Assentice Program may make the applications provided for in Paragraph 13 of this Peviced Program.
- f) Advanced apprentices assigned for vorimay be utilized to satisfy City and City-assisted contract requirements for the employment of risority trainers.
- 32. The Coordinator shall develop a pro-erast action study group program so as to Camiliarize all applicance for the Apprentice Program with the type of test that they

Will be given. All applicants shall be notified in writing at least two weeks in advance of the apprentice aptitude test that the study program is available to them. Such notice shall contain the date, time, and location of the study group meetings. The meetings shall be held in the evening after 6:30 P.M. At such time as shall be determined by the Adrdnistrator but in no event later than Merch 31, 1977, the Coordinator shall submit a detailed program including but not limited to teaching methodology, program materials, and organization of the groups.

Records

- required to be paintained under the terms of this Pevilued Program or the Order and Judgment, Local 28 and JAC, as the case may be, shall maintain separately for whites and non-whites, records and lists containing the following information, beginning with the effective date of the Affirmative Action Program entered on November 25, 1975.
 - a) Persons who request an application for or apply to take the 'hands-on' Journeyman's test described in Paragraph 5;
 - i) Fersons who take the 'hands-on' journeyman's test described in 'arayraph 5;
 - c) Persons who pass the 'hands-on' journeyman's test described in Paragraph 5;
 - d) Persons who apply for journeyman adedsalon on the basis of experience, described in Paragraph 12;

- e) Persons who are admitted, and those rejected, for journeyman membership on the basis of experience, described in Paragraph 12;
- f) Persons who seek or apply to transfer into Local 28 from an affiliated sister local union;
- s) Persons who inquire of Local 28
 about the possibility of transferring
 into Local 28 from an affiliated sister
 local union;
- h) Persons who inquire of Local 28 act to the availability of work opportunities with or through Local 28, including that not limited to inquiry about or section "permits" or "identification slips";
- i) Persons to whom "permits" or "identifications slips" are issued or work compressionations with or through Local 28 are order-vise pade available.
- j) Persons who contact Local 28 or JAC seeking sheet metal work;
- k) Persons who are employed as sheet retal workers or apprentices by Local 28 contractors.
- t) Persons working in sheet rotal shops at the time they are organized by Local 18;

- m)
- n)
- 0)

The records and Hats specified in subsection (a) through (a) of this Paragraph shall contain the nove, address, race, or national origin, union affiliation, if any, of each individual listed therein, as well as the date of the amplication, test, inquiry, contact, or employment (and a nows of the contractor, where applicable), and the disperie tion with reasons, of each such application, test, inquity, contact or employment. Covies of these records and lists shall be substitted to counsel for the parties and the Administrator at least once every three months.

Said records and lists may exclude telephonic requests for information. However, individuals requesting information by telephone shall be inforted that their recursts should be rade in writing, and a form for this purpose shall be sent to such individual.

34. Local 28 or JAC, as the case may be, civil colonit the following dara to the Administrator and the contile at the time specified:

- a) the name and race identity of persons admitted into (i) fourneyman status in Local 28 or (ii) apprentice status in the Apprentice Program, within 5 days of such admission;
- b) on January 1 and July 1 of each year
 the total number of (i) journeymen
 members of Local 28 (as defined in
 Paragraph 2), and (iii) apprentices.
 Such reports shall include the percentage of non-whites in each grow.
- all applications and other naterial concerned with the selection and work records of apprentices. These records shall include but not be littled to an applicant log for each examination showing the name, race, date of birth of each applicant, dates of completion of each step in the application procedure, and disposition of each step in the application procedure, and disposition of each application. All such records shall be made available for inspection and copying by the plaintiffs and the State Division at reasonable intervals during normal working hours or at other putually convenient times. In addition, records shall be submitted to the Addinistrator and plaintiffs as follows:
- a) Prior to each apprentice entrance best and within 7 days of the closing of the application processes the JAC shall subsit a report including the following for ation for each person who filed or requested an application for that apprentice examination: name, address, telephone

11-154 number and race or national origin, if known, for those vio request applications.

- of apprentices the JAC shall provide a report of the natural and ethnic classification of all passens who were rejected during the application and testine period and the reason therefore and the names of all persons whose application became inactive and the reason therefore.
- c) From y sin nonthe subsequent to the indenturing of a class of apprentices the EAC shall form as a report piving the names of all non-white apprentices, the mass (s) of contractors to which each was referred and the number of hours worked.
- d) The Joint Apprenticeship Consittee shall furnish the naces of all non-white apprentices who are dropped from the Apprentice Propriet. Said infirmation of 12 be furnish dusidin transposes from the date action is tal on by the laint / printiceship Carmittee. Said reserve shall conven the resson thy the individual was drove do the Process and the sees taken by the Joint Apprentices Consittee se a cain the individual in the Program. The report and I also include the training and employeds bintery of the individual while he was in the Preserve. Joint Apparenticeship Co. with a shell furnish the rests of all non-voice appearages the leave the Program of the L by action of the Mar. Such report shall contain the reasons the apprentice has left the Program as ascentained in a exis interview diliment) after a ted. fuld infer atter as be form1 shed within to any days from the time the CVI I notified that one apprentice med left the Process.

36. All records and lists required to be corriled by this Revised Program, shall be maintained for ten years and shall be made available for immostion and convincity to parties and the Administrator on reasonable notice carried regular business hours or at any other naturally convenient time without further order of the court.

Advertising and Publicity

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37. The previous shall are their best of Serie to dissering to account information to the non-white constrainty of opportunities within Local 28 and the Approximation Trogram.

Trior to each "consecut" fourneys mis first 36. and apprentice entitude rost, at a tire to be selected by the Administrator to hence full coverage and effective was, Local '8 (in the case of the "bands-on" journey on a conntion) and MC (in the case of passentice applicate access) shall undertake a process of sales resign and reblicity. under the overall summer distor of the Administrator, declared to inform the con-white community in Yew York City of the date, location, and returns of number commissions, Electrical a ications toors or and its opportunities awaitable uses overcessful completion of the Lest. Additionally, the or roll apprentic while recruition are publicity compains at 11 include a composite limited to and diverged expression. campaigns car include point and electronic radia, circuit to ation of saterial to constant, recommend and since is organizations. The City of the Work they provide space to opportunities for such reblicity.

and to the Accimientation and the other parties a viite a plan of ancest office research publicity computes decreased as

inform the non-white community in New York City of non-discriminatory opportunities in Local 20 and the Apprentice Program as provided in the Order and Judgment and this Pevised Program. The other parties shall have 30 days to comment upon the written plan and the Administrator, having considered all submissions, shall revise the plan 12 be deepen necessary and much order it into effect by May 1, 1977.

Vort Referrel

present level 28 work referred system as described to the visites at a cent one little seasonst to Paragraph 21(1) of the Order and Judgment. This study shall be consisted by a success, 1977 and the Administrator shall subset to the paratre such areas to make the decimal processors to make the money to be a successful to the processors of the paratre of the paratr

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b) It received any factor that the state of the Administrator chall give the matter notice of each complaint which the days and, when a hearing in in his

discretion varianted, expediently schedule such hearier.

General Provisions

- 42. Local 78 and the JAC shall post conspicious notices, in language and at locations approved by the 7 instrator, advising individuals of their rights under this Revised Program within 60 days after the Revised Program is approved by the Court.
- A3. Fothing contained in the Revised Programment be construed as preventing the Executive Board from as it is positions of the Revised Program for the banefit of white and other minorities provided that such plans do not interior with the operation of this P vised Gramam.
- terms of this Revised Program or order of the Asianistic or, Lecal 20 and JAC shall not change, rediffy or assaultance over of the operation or content of the fear atice From the conditions or terms upon taken an insividual shall be a seasofter of the Apprentice Program of Lecal 28 or entitle to work within the jurisdiction of Lecal 28.
- apply to the Administrator and then to the Court for the purpose of secting additional orders to incure the full of effective for twentation of the terms and intent of this Presides treates.

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discretion varianted, expediously schedule such hearing.

General Provisions

- 42. Local 28 and the JAC shall post conspicious notices, in language and at locations approved by the / 6 in-latrator, advising individuals of their rights under this Revised Program within 60 days after the Revised Program is approved by the Court.
- 43. Fothing contained in the Revised Pregram shoul be construed as preventing the Executive Board from according portions of the Revised Program for the benefit of whites and other minorities provided that such plans do not interfere with the operation of this Revised Program.
- terms of this Revised Program, or order of the Administrator, Local 20 and JAC shall not change, rodify or amend any aspect of the operation or content of the Apprentice Program, or the conditions or terms upon which an individual shall become a member of the Apprentice Program of Local 28 or entitled to work within the jurisdiction of Local 28.
- apply to the A ministrator and then to the Court for the purpose of seeling additional orders to insure the full and effective implementation of the terms and intent of this Revised Program.

Dated: New York, New York

November , 1976

DAVI. Jr. 150. Administrator

SO ORDERED :

Pated:

Administrator's Keport UNITED STATES DISTRICT SOUTHERN DISTRICT OF NEW YORK EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, and THE CITY OF NEW YORK, Plaintiffs, 71 Civ. 2877 (HFW) - against -ADMINISTRATOR'S LOCAL 638 LOCAL 28 of THE SHEET METAL WORKERS' REPORT INTERNATIONAL ASSOCIATION, LOCAL 28 JOINT APPRENTICESHIP COMMITTEE . . . SHEET METAL AND AIR-CONDITIONING CONTRACTORS' ASSOCIATION OF NEW YORK CITY, INC., etc., Defendants. By motion filed on November 19, 1976 the Equal Employment Opportunity Commission (EEOC) has requested that the Court revise the Affirmative Action Program and Order (AAPO) entered November 25, 1975. Judge Werker has directed the Administrator to hear and report on the EEOC's motion. On December 21, 1976 the Administrator held a hearing in which all parties were afforded an opportunity to elaborate on their position and respond to the position of the other parties. At that hearing the City of New York and the State Division of Human Rights indicated that they

The EEOC's Memorandum of Law sets forth their reasoning for revising the AAPO. Basically, the EEOC believes

were in basic accord with the substance of the position

taken by the EEOC.

that the current AAPO is unworkable and unenforceable because of the difficult economic conditions in the construction industry, the Second Circuit's decision which severely restricted the use of racially based ratios or preferences, and the Defendants' current work practices.

The following are the observations and recommendations of the Administrator. [References are to sections of the Revised AAPO filed by the EEOC unless otherwise noted.]

1. Sections 1 and 2. The EEOC moves that the deadline for reaching the court mandated 29% goal be set back to 1982. The EEOC correctly points out that only minimal progress has been made in attaining either the ultimate goal or the interim goals contained in the original Program. Defendant Local 28 (Local 28) contends that it would be premature to set the goal back at this time and that such an adjustment can always be made in the future. Local 28 goes on to argue that any interim goals are meaningless during this period of high unemployment, and that Local 28 is doing everything reasonably possible to bring in non whites; consequently, the only meaningful goal is the end goal of 29%. The City of New York disagrees with both the EEOC and Local 28 and argues that the interim goals should not be moved downward at this time.

There is, of course, no question that the Court can modify its orders to conform to changed conditions; however, the current goal deadline of 1981 appears to be clearly

unattainable. There is no rational reason why an unattainable goal should be kept. Despite Local 28's contention that the cost of the Administrator is too heavy a burden for Defendants to bear for an additional year (although the Administrator does recognize the fact that this entire litigation has been very costly, especially where the union has a shrinking membership) the argument of Local 28 is rejected. No one can accurately forecast the costs of administering the program into 1982 and, while the claim of poverty may very well be true today, to state what the conditions will be in 1982 is to engage in sheer speculation. Therefore, the end date of 1982 is recommended.

With regard to the interim goals, the goals set in the original Program are also unobtainable and serve little purpose under current conditions. Nonetheless the concept of interim goals is valid and must be maintained in order to properly monitor any long term affirmative action program. There is no contention by the EEOC that the interim goals are mandatory and that defendant Local 28 could be held in contempt for failing to meet them, if Local 28 has engaged in good faith efforts in this regard. The sole purpose of interim goals are to afford the parties and the Administrator with some device to measure progress so that, if warranted, other provisions of the program could be modified to reflect change circumstances.

The new schedule of interim goals is recommended.

The new definition of "total membership" as proposed by the EEOC and agreed to by the parties is recommended.

- 2. Sections 3 and 4 are recommended.
- 3. Sections 5 and 6. The EEOC moves that the next journeyman "hands on" test be given no later than May 1, 1977. The EEOC contends that the sheet metal trade has traditionally had an upswing of work in the spring and summer and that new journeymen would have a chance to obtain the employment if the test were administered in the spring. Local 28 requests that no new test be given until mid-1978 and cites both the high unemployment rate and the cost factor in administering a new test. Based upon the costs of the previous test, which contained a substantial advertising component, there is no real dispute with Local 28 that the cost of administering a test is high, even should the advertising package be greatly reduced. On the other hand, the fact that a test is put off until mid-197% does not in any way reduce costs. Since Local 28 cannot demonstrate, and in fact has not even argued, that it will be in a better financial condition in 1978, the cost factor, while relevant, is not determinative. Local 28's argument of the futility of giving a test in the present economic climate, and the Employers Association's position on potential jobs, indicating no new major work for at least one year, carry far more persuasiveness than Local 28's cost factor argument. After weighing all the competing factors it is recommended that the next journeyman test be administered no later than March 1, 1978. However, such recommendation is contingent upon the availability of the alternative entry method provided for in Section 12 of the Revised AAPO, i.e. the four

year experience program. Should that program be struck by the Court it is recommended that the "hands on" test be given within 90 days of the Court's decision, but in any event no later than March 1, 1978.

The validation and test material required to be provided by Section 6 should be provided at a date set by the Administrator. Since the validation material has not yet been completed and will not be completed until a review is undertaken by plaintiffs' experts there is no point in setting a specific date at this time.

- 4. Sections 7, 8, and 9 are recommended.
- 5. Section 10 and 12(d). Defendant Local 28 again objects to the tripartite reviewing board inferring that it is an unwarranted intrusion into internal union affairs. The court correctly provided for such review in the original AAPO and nothing the union has done since July 1975 would warrant altering or withdrawing this provision. In fact, the union's own position that they will apply to whites the same criteria afforded non whites mandates that there be uniformity in the criteria and that such criteria be established beyond suspicion.

Additionally, while the Administrator has learned a great deal about sheet metal in the past eighteen months there is no question that he would not be in a position to make judgments requiring trade expertise. Consequently, if there were no tripartite board the Administrator would, nonetheless, have to retain a sheet metal expert to advise him in technical matters. It is also likely that the plain-

tiffs would want someone with trade expertise available to them to advise them on technical matters. We would then have come full circle, except that disagreements among the experts would have to be resolved by the not-so-expert Administrator. It seems far more logical, and efficient, to have an expert board which can resolve disputes among themselves.

Defendant Local 28's argument that the creation of a tripartite board for grading the journeyman "hands on" test and reviewing the qualification of applicants under the four year experience admission program is equivalent to the replacement, by the Court, of a white JAC member by a non white is rejected. The original and Revised AAPO are "color blind" as to the makeup of the tripartite board. The original board was composed of a white person, a black person, and a spanish surnamed person. This composition occurred by chance since the racial makeup is nowhere dictated by the AAPO; as compared to the specific non white directive regarding the JAC contained in the Order and Judgment.

The tripartite board is a necessary component to the AAPO and its retention is recommended.

- 6. Section 11 is recommended.
- 7. Section 12. Local 28 objects to the four year experience admission program for non whites contending that no one who is truly qualified should object to taking a validated test. Local 28 further contends that where one has a valid test any alternate method of entry aimed at non

whites creates an impermissable preference. Local 28's objections are rejected and the four year program is recommended.

Even Local 28 recognizes that some persons may have difficulty in a testing situation and that, although the applicant is qualified, they may fail the test. [Tr. Bogen 74.] At the conclusion of the October 1975 journeyman test the Administrator was apprised of allegations by non whites that the non whites were intimidated by the test environment. That environment included some minor picketing of test sites by a few union members objecting to the Court's order, test sites located in a white working class neighborhood, picture taking of applicants by the white JAC coordinator, and the fact that each test site was being overseen by whites. The Administrator was present at the test sites and can state that, aside from the unsanctioned sporatic picketing, Local 28 did not evidence any intent to create a hostile testing situation. Nonetheless, conditions were certainly not ideal. There is no way that one can measure, at this date, the true impact of the environment on the October test scores, but it does appear that some paychological pressures did exist.

Local 28 also contends that where you have a valid test no other entry method is permissable, if such method shows a preference. Even under the original Program,

Section 47 specifically authorized Local 28 to adopt for whites any provision in the Program aimed at non whites.

And, in fact, Local 28 did follow that policy. Consequently, there would have been no preference since the four year experience program would have been available to all persons.

However, in order to make clear that no broad based "preference" is intended Section 12 should state, explicitly, that this alternate entry method is available to everyone by

deleting the word "non-whites" and by substituting "persons."

It is important to point out that while the Supreme Court in Griggs v. Duke Power Co., 401 U.S. 424 (1971), and Albermarle Paper Co. v. Moody, 422 U.S. 409 (1975), made it clear that it would be unlawful to give a test which disqualifies a disproportionate number of non whites if such test cannot be shown to be related to job performance, neither the Court nor the EEOC Guidelines state that one and only one selection device can be used. Nothing in these cases precludes an employer or union from having alternative selection devices so long as these devices can be shown to be job related.

The AAPO provides for two separate and distinct but not necessarily mutually exclusive entry methods. The first is a hands on test which can be taken by persons meeting the eligibility requirements set forth in section 7: subsection (d) of this provision requires only one year of sheet metal experience. The second entry method is the four year experience provision. As long as both selection devices are demonstrably reasonable measures of job performance and neither serves to create preferential treatment there is no rational reason for not having more than one method of obtaining journeyman status.

Selection method one, the test, is being validated to insure that the actual test given is, in fact, related to the type of work that journeymen sheet metal workers perform. Selection method two, the four year experience program, is simply a screening process to insure that the four years of experience

claimed by the applicant is the type of experience necessary to perform journeyman work. It is important to note that when the first tripartite board was selected (prior to the Court disqualifying the choice of the plaintiffs) the Administrator charged the board with the responsibility of defining, with particularity, the phrase "four years experience." Additionally, the board was to prepare a list of specific questions, and appropriate responses, for use by the board in reviewing applicants. Such questions were not to be a test but rather were to be directed at the type and length of experience claimed. For example, the board would not ask what a "brake" is used for but might ask what kind of shops the applicant worked in, and what type of work he performed. Failing to satisfy a majority of the board that the applicant has the requisite sheet metal experience does not preclude the rejected applicant from taking the "hands on" test, and if the applicant can pass the test he can still enter the union.

The contention by Local 28, on the other hand, in arguing against the four year experience program, that if an applicant cannot pass the "hands on" test but has considerable experience then, upon some kind of application, the Administrator might be able to direct some special consideration is rejected as improbable and unrealistic. [See Tr. pp. 73-75.]

The force of the argument in favor of the four year experience program is clearly increased when Local 28 requests that the next test be held in mid-1978 and, at most, there will be only annual tests thereafter. Why should any person, who has the requisite trade skills, have to wait at least a year between tests? The contention that there are

no jobs available, in this context at least, has no merit since the choice of whether to join Local 28 should be up to the potential applicant -- not the union, which has a vested interest in restricting membership during times of high industry unemployment.

When the Circuit Court struck down the apprenticeship ratio it noted that the result of the decision was to place a heavy burden upon direct qualification and admission as the means of reaching the 29% membership goal. If the only method of direct entry to journeyman membership, other than transfer, was to be single annual validated test, the burden would be greatly increased.

The arguments of Local 28 are rejected and Section 12 is recommended.

- 8. Section 13(a). Local 28 contends that this section creates an unlawful preference because it affords only non whites an opportunity to pay a reduced initiation fee. This provision is a direct carry over from Paragraph 22(d) of the Order and Judgment, which is now the law of the case since the Circuit Court has decided the appeal on the Order and Judgment and Paragraph 22(d) was left intact. Notwithstanding this fact, the reduction in initiation fees is not an impermissable preference since it only applies to a non white who would have been eligible for membership in Local 28 absent Defendants' discriminatory conduct, and it does not apply to every non white who now seeks union membership.
- 9. Sections 14 and 15 are recommended.

10. Section 16. The EEOC suggests that the journeyman deferral period be modified to reflect the current economic realities, provide the Administrator with additional flexibility, and establish a shorter re-entry period (5 days) to afford greater job opportunities to the deferred applicants.

Defendant Local 28 takes the position that a reduction of notice time for deferred applicants to change their status from 30 days to 5 days is unreasonable, and cannot be met. The EEOC and the City contend that not only can it be met but that to have a re-entry period of 30 days has a chilling effect upon person wishing to seek work in the industry. Additionally, the EEOC contends that Local 28's refusal to go along on this point demonstrates their lack of cooperative spirit. All three parties have an element of truth in their respective positions; therefore, with due respect to King Solomon, it is recommended that the reentry period be reduced to 15 days but that upon good cause shown an applicant may apply to the Administrator to direct a more expeditious re-entry.

The question of the Administrator's authority to continue a deferral past the initial twelve months, upon a showing of good cause by the applicant, raises a more serious issue. Local 28 contends that the Administrator's authority should not be "unknown" and "limitless," and that the Revised AAPO should set some limit such as six or twelve additional months. Local 28 also contends that the record keeping would be burdensome. These contentions are rejected. There is no cogent reason why a person who has passed the journeyman test, and the requirements of Section 12 of the

Revised AAPO, should be in a different position than a journeyman who takes a withdrawal card from the union. Other than some relatively minor fee payments, the record indicates that a member who takes a withdrawal card has no substantive impediments to his return at any future time to the union's rolls as an active member. [See Tr. p.18 and letter from Sol Bogen made part of the record] Consequently, there is no reason to create an artificial time barrier for deferred applicants. It is, therefore, recommended that no restrictions, beyond the requirement of a good cause finding, be placed on the Administrator.

- 11. Sections 17 and 18 are recommended.
- 12. Section 19. The EEOC has recommended that 50 apprentices be admitted into the February 1977 class. This number is based upon the figures prepared by the EEOC (See EEOC's Memorandum p.14). Defendant JAC objects to taking in 50 apprentices and sets forth their own figures to support their contention that the industry cannot suppport 50 new apprentices (See JAC Memorandum p.4). Additionally, the JAC contends that 50 new apprentices are not needed to reach the first interim goal. No one seriously questions the proposition that if new apprentices are not started in the pipeline now, then four or five years from now Local 28 will be little further along in reaching its ultimate goal than it is today. The hotly debated question is what action is appropriate, under all the conflicting circumstances, to insure that non whites are afforded an opportunity to enter Local 28 so that when jobs do become available they have an equal opportunity to obtain sheet metal employment.

After careful consideration of this matter the Administrator is not wholly convinced that the JAC and the employers have done everything reasonably possible to insure a viable apprenticeship program. In reviewing JAC Exhibit 1 to the hearing held on August 19, 1976 (See 8/19/76 transcript) one cannot help but be struck by the fact that while some employers have managed to maintain ratios of journeymen to apprentices as low as 4:1, other employers have ratios such as 30:1, 27:1, 20:1; while others have no apprentices at all.

The Employer's Association contends that economic reality and the type of work available dictates the number of apprentices that can be employed. [See transcript of August 19 hearing.] The JAC notes that at the present time there are 19 unemployed apprentices and that the decision to recommend that 25 new apprentices be indentured was not based upon the number of available jobs but was instead based upon the minimal number of apprentices need to maintain a viable program. The plaintiffs contend that training opportunities can be provided to 50 new apprentices if the JAC and employers were willing to make greater efforts.

Although the Administrator also believes that greater efforts to train apprentices are possible, one cannot help but be struck by the fact that of 53 apprentices indentured in February 1976 only 31 remain and that there are currently 19 unemployed apprentices. Since neither the parties nor the court has any current ability to reach the individual employers who, in fact, control apprentice employment opportunities, there is no way to insure that all indentured apprentices will receive sufficient on-the-job training (employ-

ment) to keep them from dropping out of the program. In weighing this factor, against the uncontested fact that the apprenticeship program is the major entry method into sheet metal work, it is evident that some balance must be reached. In reaching this balance the fact that some employers have more than twenty journeymen, but only one or two apprentices, cannot be ignored. Additionally, if one were to assume that the new first term class will lose, by attrition, 25% of its apprentices by 1978 (a figure which appears to be conservative when measured against the 42% loss in 1976) that would leave only 19 of the original 25 apprentices. Based upon the projected attrition, and the Administrator's belief that not quite all training opportunities have been fully tapped, it is recommended that the apprenticship class for February 1977 contain no less than 36 apprentices.

With regard to the number of apprentices for future classes, the Administrator is in agreement with Defendants that the initial numbers should be arrived at through the collective bargaining process and that, thereafter, the Plaintiffs could respond to the proffered numbers. The Administrator would, of course, retain the authority to review the parties' positions and, if necessary, either on application or his own motion determine whether or not such numbers are in accord with the goals and purposes of the Revised AAPO. Where such numbers are found not to be in accord, the Administrator could set the numbers.

As modified, section 19 is recommended.

14. Section 20(b). The question of apprentice to journeyman ratios has been one of the most complex problems that has faced the parties and the Administrator. In an effort to understand the conflicting positions of the parties on this issue the Administrator held an on-the-record conference on August 19, 1976 (See enclosed transcript).* The discussion at that hearing clearly indicated that the original AAPO provision requiring at least a one to four ratio was not workable. The EEOC has now proposed that the original 1:4 provision be replaced with a new provision which is considerably more flexible and which would permit the Defendants to raise appropriate objections to its implementation in particular cases. Defendants argue that there is no rational basis for any ratio, that the ratio does not do what it purports to do; namely, insure that employment of apprentices is maximized, and that such a ratio could lead to bumping of journeymen. The JAC has further pointed out that usually employers would be more than happy to put on apprentices, rather than have journeymen do the same work, since there would be a substantial financial saving.

The arguments of all the parties, and the entire record on this issue, have been given very careful considersation and, with great reluctance, it must be concluded there should be no stated ratio. While a substantial argument can be made that although there has been only one instance of a <u>de jure</u>

^{*} This conference was adjourned and never reconvened, and no specific conclusion was reached since the original AAPO was on appeal, thereby freezing the parties' positions.

ratio (a provision in a 1966 collective bargaining agreement calling for approximately one apprentice for every seven journeymen) there has been a long standing de facto ratio of approximately 1:7 -- until recent times. However, control of the ratio rests with the individual employers and not with either the JAC or Local 28. The record is clear that employers are "at liberty to employ and discharge whomever [they] shall see fit" (Standard Form of Union Agreement [Sheet Metal] 1975, Article V, Section 5). Since the Defendants have no ability to order any employer to hire apprentices, any ratio of this kind would be unenforceable.

Even though such a ratio would not be enforceable, an argument can be made that, like the interim goals, the ratio is a good measuring device to see how well the program is working. This argument has great appeal, but if the interim goals are kept in the program an additional device of this kind become superfluous.

It is therefore recommended that apprentice to journeymen ratios be removed from the program.

- 15. Section 20(c) is recommended. [Renumbered as 20(b) in Administrator's Proposal.]
- 16. Section 20(d). [Renumbered as 20(c) in Administrator's Proposal.] The EEOC has proposed that apprentices be given the opportunity to solicit their own business in order to insure that no employment opportunities are missed. This proposal has the potential of creating grave problems for

the Administrator since the Administrator must insure, to the greatest degree possible, that the manhours worked by nonwhites is proportionately equal to the manhours worked by the whites. Rather than permitting direct solicitation there should be a formal employment referral system. Under this sytem a list would be kept of all unemployed apprentices according to the length of time of their unemployed status. Jobs would be assigned off of the list upon an employer request. The following language is suggested to implement this proposal:

- (c) The JAC shall establish an employment referral system which shall incorporate the following elements:
- (i) A list of all apprentices shall be established in three groupings. Group one shall contain apprentices in terms 1, 2, 3; Group two shall contain apprentices in terms 4, 5, 6; Group three shall contain apprentices in terms 7 and 8.
- (ii) A record shall be kept for each apprentice of the number of manhours worked within each group and the JAC shall refer out apprentices in inverse order to the number of manhours worked (so that apprentices with the lowest number of manhours shall receive referrals first).
- (iii) To the extent feasible the JAC shall rotate the groupings to insure that

no one grouping, or persons therein, receive a disproportionate amount of work.

(iv) The JAC shall provide counsel for all parties and the Administrator with monthly reports. Such reports shall include but not be limited to: (A) all apprentices by name, ethnic status, term, grouping, number of manhours worked, and name of contractor(s) that the apprentice is assigned to; and (B) summary of manpower reports showing the number of journeymen and apprentices working for all employers.

The JAC shall provide all parties and the Administrator with a proposed referral system incorporating the above elements, on or before April 1, 1977.

17. New Section 20(d). A new subsection is recommended by the Administrator with the intention that the JAC be obligated to take all possible affirmative action to insure that adequate employment and/or training opportunities be available to apprentices. The Administrator, while recognizing that employers determine the number of apprentices who will work, nonetheless believes that there are some affirmative steps which the JAC can take in this regard. This new provision imposes two basic obligations:

First, whenever an employer receives a government contract, such contract must be monitored for compliance

with City, State and Federal laws, and the JAC must report any possible violations to counsel for the parties and the Administrator. Through this system the parties will be able to insure that employers meet their affirmative action obligations, under appropriate law, thereby maximizing non white employment opportunities.

Second, the JAC must seek out and apply for any appropriate governmental manpower training funds. Currently, the Federal Department of Labor utilizes funds under the Comprehensive Employment Training Act (additional funds may soon be available under pending public works and other manpower legislation) to provide on the job training (OJT) opportunities in the construction trades for the disadvantaged. There is no reason why funds of this nature should not vigorously be sought to help insure that those apprentices who have been indentured have their training opportunities maximized.

The following language is proposed to implement this mendation:

- (d) The JAC shall take all reasonable steps,in addition to those set forth in subsections(a) through (c) of this section, to insure thatapprentices receive adequate employment and/ortraining opportunities. Such steps shallinclude but not be limited to the following:
- (i) Advising counsel for all parties and the Administrator whenever an employer receives a contract from the City, State,

or Federal Government.

- (ii) Advising such employers of their obligations under City Executive Order 71,
 New York State Labor Law 220e (and any State Executive Order), and Federal Executive
 Order 11246.
- (iii) Reporting to counsel for all parties and the Administrator the names of any sheet metal employer which, based upon manhour computations, appears to be out of compliance with the appropriate statute, executive order, and/or rule and regulation.
- (iv) Taking all necessary steps to seek out and apply for governmental manpower training funds. The JAC shall advise counsel for all parties and the Administrator what actions it is taking in this regard and shall provide a copy of any funding proposal to the Administrator prior to its submission to the funding agency.

In making this proposal the Administrator can anticipate that the Defendants will object to subdivisions (i) - (iii) on, at least, the following grounds: (A) the record keeping would be costly and unduly burdensome, (B) the JAC is not in the business of monitoring employers for government agencies, (C) the JAC has no way of knowing when an employer is awarded a government contract, and (D) the contention that monitoring employers will lead to increased employment opportunities is

nothing more than speculation.

In the broadest sense the answer to these objections is that the Court has ordered the Defendants to take affirmative action to increase non white membership opportunities in Local 28. Since the ability to attract and retain non white applicants appears to have a direct correlation to employment opportunities, it follows that Defendants must take affirmative action to increase such opportunities. Whether or not the end result of this proposal will be increased job opportunities is, indeed, uncertain. However, to date, very little affirmative action has taken place and it is time that some positive forward steps be attempted. With regard to the specific points:

- (A) There is no question that the required monitoring would add an additional burden to the JAC and would increase costs. However, in light of the other record keeping requirements imposed by the AAPO it is highly unlikely that this addition will create an undue burden or prohibitive costs.
- (B) The purpose of this proposal is not to have the JAC serve as a monitoring agency for the City, State, and Federal governments, but rather to afford all parties and the Administrator with a clear picture of what opportunities actually exist for non white employment.
- (C) The Administrator has had sufficient contact with Local 28, the JAC, and the Employer's Association to know that between the three defendants they have a pretty good idea of who has been awarded what contracts, and whether such award means additional jobs (See e.g. Tr. pp. 53-56). While

there may be a circumstance in which a government contract award goes unnoticed, it is the Administrator's belief that such occurrances would, absent some sudden muteness by employers, be rare.

(D) Since a program of this nature has never been tried before it is somewhat speculative as to whether or not non white employment opportunities will increase. However, there is a reasonable possibility that some additional jobs for non whites will appear if employers know that their conduct, on government jobs at least, will be very carefully scrutinized.

If, after a reasonable period of trial, this provision proves unworkable or of insufficient value to offset the additional costs the JAC can certainly apply, pursuant to Sections 41 and/or 45 of the Revised Program to modify or discard this provision.

As proposed, this new section is recommended.

- 18. Sections 21, 22, 23, and 24 are recommended.
- 19. Section 25(a). The parties and the Administrator agree that the test given should be a mechanical comprehension test and/or spatial relations test.

The JAC proposes that the next aptitude test be given in December 1977 as opposed to May as suggested by the EEOC. The JAC contends that the cost of the test as against the low numbers to be indentured warrants such deferral. The JAC further proposes that the July 1977 class be chosen off of the MAT 8 and MAT 9 tests administered in December 1975.

The parties had previously agreed that the MAT 8 and/or MAT 9 would be used for the selection of the February 1977 class.

There is no question that the cost factors of giving a new test are high, and since there is no major objection by the EEOC to using the MAT 8 and/or MAT 9 for the July selection, it is recommended that the next JAC test should be given in December 1977.

It is further recommended that Section 25(a) be amended to permit the Administrator to decrease the frequency of the tests if conditions warrant, so that this provision conforms to section 5.

- 20. Section 25(b) is recommended.
- 21. Section 25(c). "May 1977" should read "December 1977" and it is recommended that "March 1, 1977" be changed to "May 1, 1977." As modified it is recommended.
- 22. Section 26 is recommended.
- 23. Section 27. This section should be amended to reflect that the mechanical comprehension test and/or spatial relations test is the basis of ranking. As amended, it is recommended.
- 24. Sections 28, 29, 30 and 31 are recommended.
- 25. Section 32. The date of "March 31, 1977" should read "60 days prior to the test date" and as modified is recommended.

- 26. Sections 33, 34, 35, 36, 37, 38, and 39 are recommended.
- 27. Section 40. The date of 'February 1, 1977' should be amended to read "April 1, 1977," and as modified is recommended.
- 28. Sections 41 through 45 are recommended.

The use of affirmative action as a remedy to correct the effects of historic discrimination has come under strenuous attack recently for creating "preferences" or "reverse discrimination." The Circuit Court, in this case, recognized that there is tension between the needs of effective enforcement and the avoidance of reverse discrimination. In an attempt to resolve this tension the Circuit Court applied strict criteria when a remedy might result in a preference to non whites, but the Court clearly did not strike down the district court's ability to fashion equitable relief in the form of affirmative action.

In arguing against both the original AAPO and the Revised AAPO it is patently obvious that Defendants do not want to have their conduct subject to ongoing scrutiny.

Local 28 argues that it has only one real obligation, to reach a 29% goal by 1981. The long litigation history of Local 28, dating back to 1964, which resulted in a non white population of only 3.19% in July 1974 and approximately 5.77% in December 1976 leads to the conclusion that vigerous efforts must be made to insure that non whites are afforded the same type of union membership and employment opportunities

afforded to whites in the sheet metal trade. To the extent practical, and within the guidelines laid down by the Circuit Court, the Revised AAPO removes the spectre of "reverse discrimination" and relies upon alternative entry methods (apprenticeship, transfer, valid test, and four year experience program) and publicity to expand the non white applicant pool.

The Defendants herein have let no opportunity go by to challenge the Court's Orders as burdensome and costly. Such arguments may serve to shape available remedies, but they do not serve to relieve Defendants of their liability for their wrongful conduct. The Revised AAPO sets forth a flexible, realistic program which meets the purposes of the Court's Order and Judgment, as well as the guidelines of the Circuit Court. It is therefore respectfully recommended that the Court order the Revised Affirmative Action Program as proposed by the EDOC and modified by the Administrator.

Dated: New York, New York December 30, 1976 DAVID RAFF, ESQ. ADMINISTRATOR O Revised Affirmative Action Program and Order recommended by the Administrator

1803

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, and THE CITY OF NEW YORK,

Plaintiffs,

- against -

Defendants.

1.OCAL 28,

Third-Party Plaintiff,

- against -

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Third-Party Defendant.

LOCAL 28 JOINT APPRENTICESHIP COMMITTEE,

Fourth-Party Plaintiff,

- against -

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Fourth-Party Defendant.

REVISED AFFIRMATIVE ACTION PROGRAM

Introduction

1. Upon the motion of the plaintiffs and the State Division of Human Rights (the "State Division") this Revised Affirmative Action Program ("Revised Program") is adopted after reconsideration and review of the remedial provisions of the Decision and Order dated July 18, 1975, the Order and Judgment dated August 28, 1975 and entered on September 2, 1975 ("Order and Judgment"), the Affirmative

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REVISED AFFIRMA-TIVE ACTION PRO-GRAM AND ORDER Action Program entered November 25, 1975, and the Court of Appeals decision dated March 6, 1976 in light of the present changed working and employment conditions in the sheetmetal industry in New York City, including the present severe and widespread unemployment in the industry. The goal of this Revised Program is to assure that in light of these changed circumstances and conditions the non-white* membership in Local Union No. 28 of the Sheet Metal Workers' International Association ("Local 28") reaches a minimum level of 29% by July 1, 1982; to assure that substantial and regular progress is made toward this goal in each year prior to 1982; and to assure that all members and apprentices of Local 28 share equitably in all available employment opportunities in the industry.

2. For the purpose of reaching the above goal of 29% by July 1, 1982 this Revised Program establishes the following interim percentage goals for the nonwhite membership of Local 28:

July	1,	1977	83
July	1,	1978	119
July	1,	1979	153
July	l,	1980	198
July	1,	1981	249

Each of the above percentages shall be measured against the total membership of Local 28 as of each interim goal date, respectively, and the final goal date. For the purpose of measurement, total membership shall include (a) all journeyman members, (b) all pensioners** who, while on pensioner

^{* &}quot;Non-white" as used in the Revised Program means black and Spanish surnamed individuals.

^{** &}quot;Pensioner" as used in the Revised Program means any individual who receives benefits from the Local 28 pension program.

status, have been employed as sheetmetal workers within the three years prior to the goal-date which is being measured, (c) all members or participants in the Local 28 Apprentice Program ("Apprentice Program"), and (d) all individuals who (i) have been offered admission to and membership in Local 28 but have exercised their option, pursuant to Section 16 of the Revised Program or pursuant to a parallel policy adopted # by Local 28, to defer such admission and membership and (ii) ; at the time of measurement have continued to exercise the aforesaid deferment option. The parties to this action and the Administrator are to implement this Revised Program so that the final goal shall be attained. At least once every six months, the Administrator shall review the progress toward the attainment of these interim goals and shall take any such action as he is empowered to take under the Order | and Judgment and which is necessary to assure their achievement. In addition, upon his own motion or that of any party, the Administrator is authorized and directed to periodically review the working and employment conditions in the sheetmetal industry in New York City to determine whether it is feasible and practical to increase the interim goals or reduce the time period within which any interim goal or the final goal ! shall be met by Local 28 and the JAC. It is the express purpose and intent of this Revised Program to attain the goal of 29% non-white membership in Local 28 and the Apprentice Program at the earliest practicable time.

- 3. Admission to Journeyman membership in Local 28 shall be attained only through the following procedures:
 - a) Successful completion of a 'hands-on' journeyman test administered pursuant to Sections 5 through 11;

- establishment of proof of the required experience in the sheetmetal trade pursuant to Section 12; or
- c) successful completion of the Local 28
 Apprentice Program; or
- d) transfer in accordance with the Sheet Metal Workers' International Union Constitution and Ritual; or
- e) organization of non-union shops.
- 4. Membership in the Apprentice Program shall be obtained only through the following procedures:
 - a) successful completion of an apprentice
 aptitude test, as set forth in Sections
 18 through 28; or
 - b) entry with advanced standing as set forth in Sections 29 through 32.

Admission to Journeyman Status

- 5. Local 28 shall administer a validated, nondiscriminatory, 'hands-on' journeyman's test under the
 overall supervision and approval of the Administrator no
 later than March 1, 1978 and at least once a year thereafter
 at a date, time and place to be set by the Administrator.
 The Administrator, after consultation with the parties, may apply to the Court to decrease the frequency of the tests
 consistent with the requirements of the interim goals set
 forth in Section 2.
 - pursuant to Section 5 shall be professionally developed and validated in accordance with EEOC Guidelines. With respect to the test to be administered by March 1, 1978 as required in Section 5, Local 28 shall furnish counsel for the parties and the Administrator with (i) a copy of a report demonstrating the validity of the test and (ii) a copy of the test to be

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counsel for the parties and the Administrator shall not distribute or disclose the contents of the test to any individual or organization except for the purpose of professional validation thereof. With respect to all subsequent tests administrator and counsel for the parties with the information and material described in subdivisions (i) and (ii) herein at least four weeks prior to the scheduled date of each test.

- 7. All qualified applicants shall be eligible to take the 'hands-on' journeyman's test specified in this Revised Program. A qualified applicant is defined as follows:
 - a) has or will have attained the age of18 by the date of the test, and
 - b) is a citizen or lawful permanent resident alien legally entitled to work in the United States, and
 - c) has resided in New York City or the counties of Westchester (N.Y.), Nassau (N.Y.), Suffolk (N.Y.), Passaic (N.J.), or Essex (N.J.) for six (6) months prior to the filing of an application, and
 - experience including but not limited to employment as a member in any branch of Local 400 of the Sheet Metal Workers International Association, sheet metal experience in the Armed Forces, or vocational education or taining related to the skills of a journeyman sheet metal worker.

Persons presently registered or recently registered in the Local 28 Apprentice Program or any other recognized apprentice program affiliated with the Sheet Metal Workers' International Association are not eligible.

- 8. Subject to the approval of the Administrator,
 Local 28 shall develop a standardized application form for
 the 'hands-on' journeyman's test. Such form shall include
 only the following:
 - telephone number, social security number, citizenship or lawful resident alien status, residency, record of convictions, age, sex and race or ethnic identification of the applicant (with a notation that information regarding race or ethnic identification is required solely for the purpose of compliance with the court order herein and the regulations of the United States Equal Employment Opportunity Commission), and previous sheet metal experience.
 - b) information regarding the eligibility requirements, fee, date, time, location, and nature of the 'hands-on' journeyman's test.
 - 9. Local 28 shall make available an application form for the 'Lands-on' journeyman's test and a short description of the nature of the test in the following manner:
 - a) at the office of Local 28;
 - b) by mail in roomse to inquiries and requests made by mail;
 - c) in bulk to plaintiffs, the City Department of Employment, the New York State Employment Service,

Recruitment and Training Program, Inc., Fight Back, and the other governmental or community agencies listed in Appendix A as amended from time to time.

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Completed applications for the test shall be accepted by mail or delivery in person at the offices of Local 28. Local 28 may establish, with the approval of the Administrator, a suitable cut-off date for the acceptance of applications. Local 28 may establish a fee for the taking of the 'hands-on' journeyman's test consistent with the cost of administering such a test. Such fee shall be, provisionally, \$25.00. Local 28 may apply to the Administrator for an increase in this fee upon good cause shown. Applicants shall be informed, in writing, as to the place of examination with instructions as to how to reach the place and/or a map indirecting its location.

graded by a Board of Examiners consisting of three members knowledgable in sheet metal. Said Board shall be comprised of a representative chosen by Local 28, a representative chosen by the Assinistrator, and a representative chosen by the plaintiffs and the State Division. Said Board shall act by majority vote and shall employ the passing grade level developed pursuant to the validation procedures set for in Section 6. All applicants shall be advised of their status by first class mail within 30 days of the test. Applicants who fail the test shall be advised of their possible eligibility for advanced standing in the apprenticeship program pursuant to Sections 29 through 32 of the Revised Program or pursuant to a parallel policy adopted by Local 28 and/or the Local 28 doint Apprentice Committee ("JAC").

11. (a) All qualified applicants who pass the test and are physically fit to perform sheet metal work shall

be admitted to journeyman status in Local 28 within 60 days of the test unless the applicant elects to defer admission pursuant to Section 16, or pursuant to a parallel policy adopted by Local 28.

- (b) To the best of their ability the parties and the Administrator shall endeavor to set forth on the application form the most accurate estimate of the employment opportunities available in the industry.
- 12. Commencing February 1, 1977 there shall be established a program for admission to Local 28 journeyman membership of persons who have had four years experience, obtained in the United States or elsewhere, in sheet metal work or employment reasonably related or similar to sheet metal work, including experience in the Armed Forces, or vocational training related to the skills of a sheet metal worker.

 Persons eligible for admission under this program must,
 - a) be a resident of New York City, or
 the counties of Nassau (N.Y.), Suffolk
 (N.Y.), Westchester (N.Y.), Bergen (N.J.),
 Passaic (N.J.), Essex (N.J.), Union
 (N.J.), or Hudson (N.J.) for six (6)
 months prior to application; and
 - b) be age of 18 or over; and
 - c) be physically fit to perform sheet metal work; and
 - majority of a board of three members
 knowledgable in sheet metal work,
 comprised of a representative chosen
 by Local 28, a representative chosen
 by the Administrator, and a representative chosen

State Division that the applicant has the requisite sheet metal experience; and

e) be a citizen or lawful permanent resident alien legally entitled to work in the United States.

The Administrator, after due consultation with all the parties, shall establish procedures for application to this program, for investigation and verification of the criteria set forth in subsections (a) through (e), and for the timing and conditions of admission. Appropriate publicity for the program shall be undertaken at the direction and with the approval of the Administrator.

13. a) Upon proper application, a non-white eligible for admission to journeyman membership in Local 28 pursuant to Sections 5 through 12 or Section 31 (e) of this Revised Program may request of Local 28's Executive Board that the Local 28 initiation fee be reduced pursuant to the provisions of Paragraph 22(d) of the Order and Judgment. Within 5 days of receipt of such application, the Local 28 Executive Board shall render a decision on the application in writing and notify the applicant, the Administrator, and the parties of the disposition of the application (the notification to the Administrator and the parties shall include the name and address of the applicant). If such application is denied in whole or in part, or is not acted upon within five days of its receipt by the Executive Board of Local 28, an application may be made to the Administrator who shall either grant or deny the request in writing after duly considering all the factors set forth in Paragraph 22(d) of the Order and Judgment. In considering such an application the Administrator may require the submission of such information, documents, or other data from either Local 28 or the applicant as he deems necessary.

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Upon proper application a non-white eligible for admission to journeyman membership in Local 28 pursuant to Sections 5 through 12 or Section 31(e) may request of the Local 28 Executive Board that payment of the Local 28 initiation fee commence with employment and be payable on a pro rated basis, each payment not exceeding 10% of the net pay check, and payable only during periods of employment until the fee is paid. Within 5 days of the receipt of such applip cation the Local 28 Executive Board shall render a decision r on the application in writing and notify the applicant, the Administrator, and all parties of the disposition of the application (the notification to the Administrator and the parties shall include the applicant's name and address). If n such application is denied in whole or in part or not acted upon within 5 days of its receipt by the Executive Board of | Local 28, an application may be made to the Administrator who shall either grant or deny the application in writing. The decisions of the Executive Board of Local 28 and the Administrator shall be made having duly considered the financial circumstances of the applicant.

to Section 13 has been pending with the Administrator for more than 5 days a non-white cligible for admission to journeyman membership in Local 28 pursuant to Sections 5 through 12 or Section 31(e) of this Revised Program shall be admitted conditionally to journeyman membership upon payment of \$56 dollars and one month's dues pending the determination of the Administrator which shall be made within 30 days of the date of the application to the Administrator. During such conditional membership an applicant will be entitled to all the rights and privileges of regular journeyman membership.

b) If a conditional member is terminated without becoming a regular journeyman member of Local 28 he

shall be entitled to a return of any dues paid in advance for any month in which he was not employed and, if he was not employed during his conditional membership, he shall also be entitled to a return of any payment made toward the initiation fee.

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- 15. The granting of any application pursuant to Section 13 shall not diminish any rights or privileges accruing to journeyman membership in Local 28.
- Sections 5 through 11 shall be permitted to defer such admission for up to twelve months from the time he is first entitled to be admitted. During such period, a person who has elected to defer may apply to the Administrator for further deferral of admission, and upon a showing of good cause, the Administrator may continue such deferment for such time as the Administrator shall determine. If an applicant invokes his right of deferral he shall be admitted, on the same terms and conditions as he was previously entitled, within 15 days of written notice to Local 28 that he seeks to be admitted, however, upon good cause shown by the applicant, the Administrator may direct Local 28 to admit the applicant in less than 15 days.
 - 17. Local 28 shall issue "permits" or "identification slips" only with the express written consent of the Administrator, and pursuant to Paragraph 22(f) of the Order and Judgment.

Apprentice Program

18. The JAC shall maintain an Apprentice Program of four years duration or less. The terms and conditions of the apprentice program shall be as set forth in the Collective Bargaining Agreement ("Standard Form of Union Agreement . . . between Local 28 . . . and Sheet Metal Contractors"), the Local 28 Joint Apprenticeship Trust and Indenture, and

the rules and regulations thereunder except as modified by the Order and Judgment, the provisions of this Revised Program, or order of the Administrator pursuant to his powers under the Order and Judgment and this Revised Program.

- apprentices by February 1977 and another class of apprentices (in a number to be determined as set forth in subsection (b) below) by July 1977. The JAC shall indenture two classes of apprentices each year up to and including July 1982; the classes shall be indentured in February and July of each year.
- b) Upon consideration of the goals of this Revised Program, and the availability of employment opportunities in the industry, the JAC shall forward its recommendation of the number of apprentices to be indentured in each class, no later than 90 days before each class is indentured, to counsel for the parties and the Administrator. Such recommendation shall be accompanied by a report setting forth the basis for the recommendation. Any objections to the recommendation shall be filed with the Administrator no later than 15 days after receipt of the JAC's recommendation and report. The Administrator shall review the recommendations and objections, if any, to determine if the action taken by the JAC is in accord with the goals and objectives of the Revised Program. Upon a finding the the JAC's recommendation does not meet the goals and objectives of the Revised Program the Administrator shall render his determination as to the appropriate number of apprentices to be indentured. The Administrator shall render his determination within 20 days after the date for filing objections.
 - c) The numbers of apprentices to be indentured shall include those apprentices admitted with advanced standing.

- a criterion for employment, and apprentices may be rotated for employment where necessary and feasible pursuant to subsection (c) of this section.
- apprentices with classroom instruction, including evenings and Saturdays where necessary, during periods of unemployment, and shall credit such hours toward fulfillment of apprenticeship requirements. The JAC may authorize the accelerated advancement or graduation of any apprentice as it deems proper.
- c) The JAC shall establish an employment referral system which shall incorporate the following elements:
- (i) A list of all apprentices shall be established in three groupings. Group one shall contain apprentices in terms 1, 2, 3; Group two shall contain apprentices in terms 4, 5, 6; Group three shall contain apprentices in terms 7 and 6.
- prentice of the number of manhours worked within each group and the JAC shall refer out apprentices in inverse order to the number of manhours worked (so that apprentices with the lowest number of manhours shall receive referrals first).
- (iii) To the extent feasible the JAC shall rotate the groupings to insure that no one grouping, or per-
- the parties and the Administrator with monthly reports. Such reports shall include but not be limited to: A) all apprentices by name, ethnic status, term, grouping, number of manhours worked, and name of contractor(s) that the apprentice is assigned to; and B) summary of manpower reports showing the number of journeymen and apprentices working for all employees.

The JAC shall provide counsel for all parties and the Administrator with a proposed referral system incorporating the above elements, on or before April 1, 1977.

- d) The JAC shall take all reasonable steps, in addition to those set forth in subsections (a) through (c) of this section, to insure that apprentices receive adequate employment and/or training opportunities. Such steps shall include but not be limited to the following:
- (i) Advising counsel for all parties and the Administrator whenever an employer receives a contract from the City, State, or Federal Government.
- (ii) Advising such employers of their obligations under City Executive Order 71, New York State
 Labor Law 220e (and any State Executive Order), and Federal
 Executive Order 11246.
- (iii) Reporting to counsel for all parties and the Administrator the names of any sheet metal employers which, based upon mannour computations, appears to be out of compliance with the appropriate statute, executive order, and/or rule and regulation.
- (iv) Taking all necessary steps to seek out and apply for governmental manpower training funds. The JAC shall advise counsel for all parties and the Administrator what actions it is taking in this regard and shall provide a copy of any funding proposal to the Administrator prior to its submission to the funding agency.
- 21. Upon successful completion of the Apprentice

 Pregram, apprentices shall be promptly admitted to full journeyman membership upon payment of the balance due of the initiation fee, if any, which upon application to the Local 28

 Executive Board may be paid on an installment basis for good
 cause shown, and subject to the procedures contained in Section

 13.

- be made available to and accepted from any qualified candidate. A qualified candidate is defined as follows: any person who is deemed physically fit for sheet metal work and who has or will have attained the age of 18 years by the date of indenture of the next scheduled apprentice class and who is not older than 25 years of age (for veterans of active military duty the age limit is extended one year for each year of such duty up to the age of 30) and for non-whites not over the age of 35 applying for advanced standing, and who is a citizen or permanent resident alien.
- shall develop a standardized application form for the Apprentice Program. The application form shall include information about the date of the next class of apprentices to be indentured, and shall require only the following information of the applicant:
 - a) Name, address and telephone number;
 - b) Birth date and age;
 - c) Social Security number;
 - d) Extent of education;
 - e) Sex;
 - f) Race or ethnic classification (with a notation that this information is required solely for the purposes of compliance with federal anti-discrimination statutes);
 - g) Military service;
 - h) Convictions and pending criminal charges;
 - Citizenship or lawful permanent resident alien status.
 - 24. Application forms for the Apprentice Program shall be available at the offices of the JAC during normal business hours and at the offices of the organizations listed

in Appendix A at least 60 days before an examination. Application forms shall be made available by mail upon written request. Completed applications shall be accepted in person or by mail at the offices of the JAC. There shall be a filing fee of no more than \$15.00. Application forms shall be made freely available to any governmental employment office and minority community organizations not listed in Appendix A upon request. The time for filing applications for a particular apprentice test may be closed by the JAC at a reasonable time (not to exceed three weeks) before the date of the examination.

- in December, 1977 and at least once yearly thereafter at a date, time and location approved by the Administrator. The test shall consist of the following: (i) a mechanical comprehension test, which has been validated under EEOC Guidelines, similar in substance and scope to the mechanical comprehension test administered by JAC in April 1969, and/or (ii) a spatial relations test, which has been validated under EEOC Guidelines, similar in substance and scope to the spatial relations test, which has been validated under EEOC Guidelines, similar in substance and scope to the spatial reconsultation with the parties, may apply to the Court to decrease the frequency of the tests consistent with the requirements of the interim goals set forth in Section 2.
- b) The JAC may apply to the Administrator

 to give a basic "read and follow directions" test which has
 been validated under EEOC Guidelines and is designed to ascertain an applicant's ability to master and understand those
 written and verbal instructions, directions, and other communications necessary to participate in the Apprentice Program
 at the first year level; upon good cause shown, the Administrator shall authorize the administration of such a test as
 part of the apprentice aptitude test. There shall be professionally developed and validated a qualifying score on

The "read and follow directions" test designed to reflect the minimum ability necessary to participate in the Apprentice Program at the first year level. The JAC may also apply to the Administrator to give a math test as part of the apprentice aptitude test, and such test may be given upon good cause shown. Such math test shall be professionally developed and validated (pursuant to EEOC Guidelines) as to content and qualifying score in such manner as to reflect the minimum ability necessary to participate in the Apprentice Program that the first year level.

- (c) With respect to the apprentice aptitude test which is to be administered in December 1977, on or before May 1, 1977, the JAC shall furnish counsel for the paraties and the Administrator with (i) a copy of a report demonstrating the validity of the test and (ii) a copy of the test to be administered, provided that counsel for the parties and the Administrator shall not distribute or disclose the contents of the test to any individual or organization except for the purpose of validation thereof. With respect to all subsequent tests administered pursuant to this section, the JAC shall provide the Administrator and counsel for the parties with the information and material requested in subsections (i) and (ii) herein at least four weeks prior to the schedule date of each test.
 - 26. Within three weeks of the administration of an apprentice aptitude test, JAC shall provide the Administrator and all parties with:
 - a) the names, race and ethnic identification, raw scores and rank of all candidates on all tests; and
 - b) the mean and median scores on all tests of all identifiable racial and ethnic groups among the candidates.

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- gations under Section 19, apprentices chosen by means of the apprentice aptitude test shall be selected on the basis of the ranking of scores (highest first) received on the mechnical comprehension test and/or the spatial relations test among all eligible candidates.* If a "read and follow directions" test and/or a math test is administered pursuant to Section 25, then ranking and selection based upon scores on the mechanical comprehension test and/or the spatial relations test shall be from among those applicants who meet or exceed the qualifying score on the "read and follow directions" test and/or the math test.
- may be required to appear for orientation and a physical examination prior to being indentured. The cost of physical examinations are to be borne one half by successful applicants and one half by the JAC. Additional persons may be invited to orientation and a physical examination by Local 28 JAC if that appears desirable. Persons selected in accordance with the above procedures shall be indentured as apprentices unless such indenturing is waived by them, or they are certified physically unable to perform sheet metal work by a medical practicioner licensed in New York State.

Advanced Apprentices

29. There shall be established by the JAC procedures for the admission and advanced placement in the Apprentice Program of non-white apprentices who have experience in sheet metal work or trade education but cannot perform at

^{*} Apprentices chosen for the July 1977 class shall be seelected on the basis of ranking of scores received on the spatial relations test MAT 8 and MAT 9 given December 1975.

plourneyman level. Applicants for advanced placement shall have at least six months experience in sheet metal work or trade education, be physically fit and shall be not less than 18 years old or more than 35 years old by the date of indenture of the next scheduled apprentice class.

- 30. The Training Coordinator of JAC (the "Coordinator") shall evaluate the experience of all applicants for advanced standing and shall make placement of the appropriate grade level. The grade level assigned shall be conditional for a period to be determined by the Coordinator, not exceeding three months, based upon classroom work and on the job performance. Applicants who challenge the grade level assigned shall be advised of their right to appeal to the Administrator.
- a number of advanced apprentices to be admitted from the list resulting from each test, based upon the needs of the Apprentice Program at any given time and the number of applicants eligible for advanced standing as certified by the Coordinator.
 - b) Apprentices who meet the requirements of Section 29 shall be selected for advanced standing in the following manner:
- (i) Those whose ranking on the apprentice aptitude examination qualifies them for acceptance into
 the Apprentice Program pursuant to Section 19 shall be selected in accordance with their ranking and admitted with
 advanced standing, subject to the number determined by the
 Administrator pursuant to subdivision (a) of this Section.
- (ii) It there are insufficient apprentices who qualify for advanced standing selected by the procedure contained in subdivision (b)(i) of this section to satisfy the number determined by the Administrator, additional apprentices to reach this number shall be selected in ranked order, from those who are over 25 years of age and

whose score on the apprentice aptitude examination places them below the number otherwise selected pursuant to Section 19.

- c) The number of apprentices admitted with advanced standing under subdivision (b)(i) of this section shall be included in the number of apprentices selected pursuant to Section 19. The number of apprentices admitted with advanced standing under subdivision (b)(ii) of this section shall not be included in the number of apprentices selected pursuant to Section 19.
- d) An advanced apprentice shall be entitled to all rights, privileges and other benefits including work referral, pay, instruction, and supervision accruing to regular apprentices at the same level of training.
- e) Apprentices admitted with advanced standing pursuant to Sections 29 through 31 who successfully complete the Apprentice Program may make the applications provided for in Section 13 of this Revised Program.
- f) Advanced apprentices assigned for work may be utilized to satisfy City and City-assisted contract requirements for the employment of minority trainees.
- study group program so as to familiarize all applicants for the Apprentice Program with the type of test that they will be given. All applicants shall be notified in writing at least two weeks in advance of the apprentice aptitude test that the study program is available to them. Such notice shall contain the date, time, and location of the study group meetings. The meetings shall be held in the evening after 6:30 P.M. At such time as shall be determined by the Administrator but in no event later than 60 days prior to the test date, the Coordinator shall submit a detailed program including but not limited to teaching methodology, program materials, and the organization of the groups.

Records

33. In addition to any other records or lists required to be maintained under the terms of this Revised Program or the Order and Judgment, Local 28 and JAC, as the case may be, shall maintain separately for whites and non-whites, records and lists containing the following information, beginning with the effective date of the Affirmative Action Program entered on November 25, 1975.

- for or apply to take the 'hands-on'
 journeyman's test described in Section 5;
- b) Persons who take the 'hand-on' journeyman's test described in Section 5;
- c) Persons who pass the 'hands-on journeyman's test described in Section 5;
- d) Persons who apply for journeyman admission on the basis of experience, described in Section 12;
- e) Persons who are admitted, and those rejected, for journeyman membership on the basis of experience, described in Section 12;
- f) Persons who seek or apply to transfer into Local 28 from an affiliated sister local union;
- g) Persons who inquire of Local 28 about the possibility of transferring into Local 28 from an affiliated sister local union;
- h) Persons who inquire of Local 28 as to the availability of work opportunities with or through Local 28, including but not limited to inquiry about or seeking

"permits" or "identification slips";

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- i) Persons to whom "permits" or "identification slips" are issued or work opportunities with or through Local 28
 are otherwise made available;
- j) Persons who contact Local 28 or JAC seeking sheet metal work;
- k) Persons who are employed as sheet metal workers or apprentices by Local 28 contractors;
- Persons working in sheet metal shops at the time they are organized by Local 28;
- m) Persons who are reinstated to journeyman membership or membership in the Apprentice Program;
- Non-whites who apply for advanced standing in the apprenticeship program described in Sections 29-32;
- Non-whites who are granted advance standing in the apprenticeship program and the standing granted as described in Sections 29-32;

The records and lists specified in subsection (a) through (o) of this Section shall contain the name, address, race, or national origin, union affiliation, if any, of each individual listed therein, as well as the date of the application, test, inquiry, contact, or employment (and the name of the contractor, whereapplicable), and the disposition with reasons, of each such application, test, inquiry, contact or employment. Copies of these records and lists shall be submitted to counsel for the parties and the Administrator at least once every three months.

said records and lists may exclude telephonic requests for information. However, individuals requesting information by telephone shall be informed that their requests should be made in writing, and a form for this purpose shall be sent to such individual.

- 34. Local 28 or JAC, as the case may be, shall submit the following data to the Administrator and the parties at the time specified:
 - a) the name and ethnic identity of persons admitted into (i) journeyman status in Local 28 or (ii) apprentice status in the Apprentice Program, within 5 days of such admission;
 - b) on January 1 and July 1 of each year the total number of (i) journeyman members of Local 28 (as defined in Section 2), and (ii) apprentices.

 Such reports shall include the percentage of non-whites in each group.
- all applications and other material concerned with the selection and work records of apprentices. These records shall include but not be limited to an applicant log for each examination showing the name, ethnicity, date of birth of each applicant, dates of completion of each step in the application procedure, and disposition of each step in the application procedure, and disposition of each application.

 All such records shall be made available for inspection and copying by the plaintiffs and the State Division at reasonable intervals during normal working hours or at other mutually convenient times. In addition, records shall be submitted to the Administrator and plaintiffs as follows:

a) Prior to each apprentice entrance test and within 7 days of the closing of the application procedure the JAC shall submit a report including the following information for each person who filed or requested an application for that apprentice examination: name, address, telephone number and race or national origin, if known, for those who request applications.

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- b) Within 20 days after indenturing a class of apprentices the JAC shall provide a report of the names and ethnic classification of all persons who were rejected during the application and testing period and the reason therefore and the names of all persons whose application became inactive and the reason therefore.
- c) Every six months subsequent to the indenturing of a class of apprentices the JAC shall furnish a
 report giving the names of all non-white apprentices, the
 name(s) of contractors to which each was referred and the
 number of hours worked. Such report shall be a summary of the
 reports required to be filed monthly pursuant to Section 20(c).
 - d) The Joint Apprenticeship Committee shall furnish the names of all non-white apprentices who are dropped from the Apprentice Program. Said information shall be furnished within twenty days from the date action is taken by the Joint Apprenticeship Committee. Said report shall contain the reason why the individual was dropped from the Program and the steps taken by the Joint Apprenticeship Committee to retain the individual in the Program. The report shall also include the training and employment history of the individual while he was in the Program. The Joint Apprenticeship Committee shall furnish the names of all non-white apprentices who leave the Program other than by action of the JAC. Such report shall contain the reason the apprentice has left the Program as ascertained by an exit interview diligently attempted.

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Said information shall be furnished within twenty days from the time the JAC is notified that the apprentice has left the Program.

36. All records and lists required to be compiled by this Revised Program shall be maintained for ten years and shall be made available for inspection and copying by the parties and the Administrator on reasonable notice during regular business hours or at any other mutually convenient time without further order of the court.

Advertising and Publicity

37. The parties shall use their best efforts to disseminate accurate information to the non-white community of opportunities within Local 28 and the Apprentice Program.

38. Prior to each 'hands-on' journeyman's test and apprentice aptitude test, at a time to be selected by the Administrator to insure full coverage and effectiveness, Local 28 (in the case of the 'hands-on' journeyman's examination) and JAC (in the case of apprentice aptitude tests) shall undertake a program of advertising and publicity, under the overall supervision of the Administrator, designed to inform the non-white community in New York City of the date, location, and nature of such examinations, the qualifications therefore and the opportunities available upon successful completion of the test. Additionally, the overall apprenticeship recruiting and publicity campaign shall include a coma ponent limited toward advanced apprentices. These campaigns | may include print and electronic media, dissemination of ma-I terial to community, government and minority organizations. The City of New York may provide space and opportunities I for such publicity.

39. By April 1977, Local 28 and JAC shall provide to the Administrator and the other parties a written plan of an effective general publicity campaign designed to inform

the non-white community in New York City of non-discriminatory opportunities in Local 28 and the Apprentice Program as provided in the Order and Judgment and this Revised Program.

The other parties shall have 30 days to comment upon the written plan and the Administrator, having considered all submissions, shall revise the plan if he deems necessary and shall order it into effect by May 1, 1977.

Work Referral

. . . .

40. The Administrator shall conduct a study of the present Local 28 work referral system as described in the written statement submitted pursuant to Paragraph 21(g) of the Order and Judgment. This study shall be completed by April 1, 1977 and the Administrator shall submit to the parties such recommendations he deems necessary to assure that non-whites do not bear a disproportionate share of unemployment.

Resolution of Disputes

- 41. a) The Administrator shall hear and determine all complaints concerning the operation of the Order and Judgment and this Revised Program and shall decide any questions of interpretation and claims of violations of the Order and Judgment and the Revised Program, acting either on his own initiative or at the request of any party herein or any interested person. All decisions of the Administrator shall be in writing and shall be appealable to the Court.
- b) Any party or my individual affected by
 this Revised Program may make a complaint to the Administrator within thirty days after the situation complained of
 arises. The Administrator shall give the parties notice of
 such a complaint within five days and, where a hearing is in
 his discretion warranted, expediously schedule such hearing.
 General Provisions
 - 42. Local 28 and the JAC shall post conspicuous notices, in language and at locations approved by the

Administrator, advising individuals of their rights under this Revised Program within 60 days after the Revised Program is approved by the Court.

- 43. Nothing contained in the Revised Program should be construed as preventing the Executive Board from adopting portions of the Revised Program for the benefit of whites and other minorities provided that such plans do not interfere with the operation of this Revised Program.
- the terms of this Revised Program or order of the Administrator, Local 28 and JAC shall not change, modify or amend any aspect of the operation or content of the Apprentice Program, or the conditions or terms upon which an individual shall become a member of the Apprentice Program of Local 28 or entitled to work within the jurisdiction of Local 28.
- 45. At any time, any of the parties herein may apply to the Administrator and then to the Court for the purpose of seeking additional orders to insure the full and effective implementation of the terms and intent of this Revised Program.

Dated: New York, New York December 30, 1976

> DAVID RAFF, ESQ. Administrator

SO ORDERED:

U.S.D.J.

Dated:

APPENDIX A

New York State Division of Employment (Department of Labor)

Department of Employment of the City of New York

Bureau of Labor Services of the City of New York

Recruitment and Training Program, Inc.

|| Fight Back

Asian Americans for Equal Employment

| Black Economic Survival

Regional Neighborhood Manpower Services Centers of New York City

New York City Board of Education (Public High School and Evening Trade Division)

Williamsburg Coalition

New York Urban League

National Association for the Advancement of Colored People

Puerto Rican Community Development Project

|| National Association for Puerto Rican Civil Rights

Citywide Coalition of Black, Hispanic, and Asians in Construction

New York Project Equality

I Commonwealth of Puerto Rico

Opportunities Industrialization Center of New York, Inc.

Bedford-Stuyvesant Restoration Corp.

New York City Human Rights Commission*

New York State Division of Human Rights*

^{*} Send notices of exams, but no bulk application.

Order dated January 17, 1977

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THE OYMENT OPPORTUNITY	-x :
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and another	ORDER
II. LEI METAL III. LEI METAL	: 71 Civ. 2877 (H::
AND TORS! ASSOCIATION OF NEW	:
Defendants.	: : -X
	•
This di-Party Plaintiff,	*
- wast-	:
THE SIVISION OF HUMAN	:
Third Party Defendant.	:
	: -x
A A S JOINT APPRENTICESHIP	:
Courth-Party Plaintiff,	:
Fourth-Party Defendant:	•

. PITTURANCES: (See last page)

HUNRY F. WERKER, D. J.

Examination of the transcript of the hearings before the referensizator as well as the memoranda submitted in regard to the metion of the Equal Employment Opportunity Commission ("E.E.O.C.") persuade me that the goal one of 1981 for the reaching of the 29% non-white goal as established under the original Affirmative Action Program and Order has become impracticable under the current depressed state of the sheetmetal industry, and consequently I endorse the extension of the deadline to 1982. I feel that a revision as provided in the Revised Affirmative Action Program and Order ("Revised Program") of the interim goals is in order so that realistic deadlines may be set and kept. Reluctantly, I concur in the finding of the Administrator that an apprentice-journeyman ratio as originally contemplated must be discarded as a method of insuring non-white employment since it is not within the control of the parties to this action to maintain such a ratio. I endorse the four-year experience program and the employment referral system as flexible devices to increase non-white enrollment and employment opportunities. The number of apprentices to be indentured in the February, 1977 class fixed by the order at thirty-six strikes me as a fair and attainable number which takes into account the state of the economy. Requiring the JAC to give advice concerning the receipt by employers of government commacts as well as reporting on apparent non-compliance with local, state and federal requirements is reasonable. The JAC as a matter of course received mornily statistics on the employment of Local 28 members broken down by race, and a prief review of those figures will enable it to fulfill this reporting requirement. This is particularly so in light of the fact that since the TAC is subject to state and federal (although not city) requirements it must be familiar with these requirements anyway. In addition, the Revised Program is consistent

with the Second Circuit's directive in the decision on the appeal of the trial of this action in that any portion of the Revised Program may be applied as well for the benefit of whites and of other minorities. The suggestion of the E.E.O.C. as to the inclusion of a contingent provision for an earlier date for the next "hands-on" journey man's test in response to the Administrator's report is adopted as it properly considers the possibility that the economic climate in the industry may improve.

Insofar as the Administrator's Report of December 30, 1976 as modified by the Revised Affirmative Action Program and Order signed on this date adopts the position of the E.E.O.C., the motion of the E.E.O.C. to amend the Order and Judgment of August 28, 1975 and the Affirmative Action Program and Order entered November 25, 1975, is hereby granted.

TEMUY TORKUR

SO ORDERED.

DATED: New York, New York

January 17, 1977

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APPEARANCES:

Attorney for Equal Employment Opportunity Commission:

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Municipal Building
New York, New York 10007

By: Gerald J. Dunbar Ellen Kramer Sawyer Of Counsel 183. Revised Affirmative Action Program and Order

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OL.	T	i.	RN	DI	STE	RICT	OF	NEW	YORK

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, and THE CITY OF NEW YORK,

Plaintiffs,

- against -

LOCAL 638. . .
LOCAL 28 OF THE SHEET METAL WORKERS'
INTERNATIONAL ASSOCIATION, LOCAL 28
JOINT APPRENTICESHIP COMMITTEE. . .
SHEET METAL AND AIR-CONDITIONING
CONTRACTORS' ASSOCIATION OF NEW YORK
CITY, INC., etc.,

Defendants.

LOCAL 28,

Third-Party Plaintiff,

- against -

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Third-Party Defendant.

LOCAL 28 JOINT APPRENTICESHIP COMMITTEE,

Fourth-Party Plaintiff,

- against -

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Fourth-Party Defendant.

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PEVISED AFFIRMA-TIVE ACTION PRO-GRAM AND ORDER

REVISED AFFIRMATIVE ACTION PROGRAM

Introduction

1. Upon the motion of the plaintiffs and the State Division of Human Rights (the "State Division") this Revised Affirmative Action Program ("Revised Program") is adopted after reconsideration and review of the remedial provisions of the Decision and Order dated July 18, 1975, the Order and Judgment dated August 28, 1975 and entered on September 2, 1975 ("Order and Judgment"), the Affirmative

Action Program entered November 23, 1975, and the Court of Appeals decision dated March 6, 1976 in light of the present changed working and employment conditions in the sheetmetal industry in New York City, including the present severe and widespread unemployment in the industry. The goal of this Revised Program is to assure that in light of these changed circumstances and conditions the non-white* membership in Local Union No. 28 of the Sheet Metal Workers' International Association ("Local 28") reaches a minimum level of 29% by July 1, 1982; to assure that substantial and regular progress is made toward this goal in each year prior to 1982; and to assure that all members and apprentices of Local 28 share equitably in all available employment opportunities in the industry.

2. For the purpose of reaching the above goal of 29% by July 1, 1982 this Revised Program establishes the following interim percentage goals for the nonwhite membership of Local 28:

July	1,	1977	8%
July	1,	1978	11%
July	1,	1979	15%
July	1,	1980	19%
July	1.	1981	24%

Each of the above percentages shall be measured against the total membership of Local 28 as of each interim goal date, respectively, and the final goal date. For the purpose of measurement, total membership shall include (a) all journey-man members, (b) all pensioners** who, while on pensioner

^{* &}quot;Non-white" as used in the Revised Program means black and Spanish surnamed individuals.

^{** &}quot;Pensioner" as used in the Revised Program means any individual who receives benefits from the Local 28 pension program.

status, have been employed as sheetmetal.workers within the three years prior to the goal-date which is being measured, (c) all members or participants in the Local 28 Apprentice Program ("Apprentice Program"), and (d) all individuals who (i) have been offered admission to and membership in Local 28 but have exercised their option, pursuant to Section 16 of the Revised Program or pursuant to a parallel policy adopted by Local 28, to defer such admission and membership and (ii) at the time of measurement have continued to exercise the aforesaid deferment option. The parties to this action and the Administrator are to implement this Revised Program so that the final goal shall be attained. At least once every six months, the Administrator shall review the progress toward the attainment of these interim goals and shall take any such action as he is empowered to take under the Order and Judgment and which is necessary to assure their achievement. In addition, upon his own motion or that of any party, the Administrator is authorized and directed to periodically review the working and employment conditions in the sheetmetal industry in New York City to determine whether it is feasible and practical to increase the interim goals or reduce the time period within which any interim goal or the final goal shall be met by Local 28 and the JAC. It is the express purpose and intent of this Revised Program to attain the goal of 29% non-white membership in Local 28 and the Apprentice Program at the earliest practicable time.

- 3. Admission to Journeyman membership in Local28 shall be attained only through the following procedures:
 - a) Successful completion of a 'hands-on' journeyman test administered pursuant to Sections 5 through 11;

the Executive goard or Local 28 and compliance with the relevant provisions of the Sheet Metal Workers' International Union Constitution and Ritual.

- establishment of proof of the required experience in the sheetmetal trade pursuant to Section 12; or
- successful completion of the Local 28 (:) Apprentice Program; or
- transfer in accordance with the Sheet d) Metal Workers' International Union Constitution and Ritual; or
- organization of non-union shops; or (2) f)人 Membership in the Apprentice Program shall be 4

obtained only through the following procedures:

- successful completion of an apprentice a) aptitude test, as set forth in Sections 18 through 28; or
- entry with advanced standing as set forth in Sections 29 through 32.

Admission to Journeyman Status

ind (ii) to decrease the nistered subsequent to e requirements of the

-on journeyman's res , 1978, and (ii) to d o be administered sub r with the requirement in Section 2.

unle a 'hands-on' jou or to March 1, 1978, I the tests to be adm 78, consistent with t Is set forth in Secti

(i) to schedule certain prior to frequency of the March 1, 1978, c interim goals se

schedule

- Local 28 shall administer a validated, nondiscriminatory, 'hands-on' journeyman's test under the overall supervision and approval of the Administrator no Later than March 1, 1978 and at least once a year thereafter ar a date, time and place to be set by the Administrator. The Administrator, after consultation with the parties, may apply to the Court to decrease the frequency-of the tests consistent with the requirements of the interim goals set forth in Section 2.
- The 'hands-on' journeyman's tests administered parsuant to Section 5 shall be professionally developed and validated in accordance with EEOC Guidelines. With respect to the test to be administered by March 1, 1978 as required in Section 5, Local 28 shall furnish counsel for the parties and the Administrator with (i) a copy of a report demonstrating the validity of the test and (ii) a copy of the test to be

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counsel for the parties and the Administrator shall not distribute or disclose the contents of the test to any individual or organization except for the purpose of professional validation thereof. With respect to all subsequent tests administrator durant to Section 5, Local 28 shall provide the referred pursuant to Section 5, Local 28 shall provide the referred pursuant to section 5 to the parties with the information and material described in subdivisions (i) and (ii) herein at least four weeks prior to the scheduled date of such test.

- 7. All qualified applicants shall be eligible to take the 'hands on' journeyman's test specified in this Revised Program. A qualified applicant is defined as follows:
 - a) has or will have attained the age of18 by the date of the test, and
 - 1) is a citizen or lawful permanent resident alien legally entitled to work in the United States, and
 - c) has resided in New York City or the counties of Westchester (N.Y.), Mansau (N.Y.), Suffolk (N.Y.), Passaic (N.J.), or Essex (N.J.) for six (6) months prior to the filing of an application, and
 - cxperience including but not limited to employment as a member in any branch of Local 400 of the Sheet Metal Workers International Association, sheet metal experience in the Armed Forces, or vocational education or taining related to the skills of a journeyman sheet metal worker.

Learner presently registered or recently registered in the bocar 28 Apprentice Program or any other recognized approatice program affiliated with the Sheet Metal Workers' International Association are not eligible.

- 8. Subject to the approval of the Administrator, Local 28 shall develop a standardized application form for the Chands on' journeymen's test. Each form shall include only the following:
 - telephone number, social accurity number, citizenship or lawful resident
 alien status, residency, record of convictions, age, sex and race or ethnic
 identification of the applicant (with a notation that information regarding race or echnic identification is required
 solely for the purpose of compliance with the court order herein and the regulations of the United States Equal Employment Opportunity Commission), and previous sheet metal experience.
 - b) information regarding the eligibility requirements, fee, date, time, location, and nature of the 'hands-on' journeyman's test.
- 9. Local 28 shall make available an application form for the 'hands-on' journeyman's test and a short description of the nature of the test in the following manner:
 - a) at the offices of Local 28;
 - b) by mail in response to inquiries and requests made by mail;
 - c) in bulk to plaintiffs, the City

 Department of Employment, the New

 York State Employment Service,

Rectrictment and Training Program, Inc., Fight Back, and the other governmental or community agencies listed in Appendix A as amended from time to time.

completed applications for the test shall be accepted by mail or delivery in person at the offices of Local 28. Local 28 may establish, with the approval of the Administrator, a smitable cut off date for the acceptance of applications. Local 28 may establish a fec for the taking of the 'hands on' journeyman's test consistent with the cost of administering such a test. Such fee shall be, provisionally, \$25.00. Local 28 may apply to the Administrator for an increase in this fee upon good cause shown. Applicants shall be intormed, in writing, as to the place of examination with instructions as to how to reach the place and/or a map indicating its location.

preded by a Board of Examiners consisting of three members knowledgable in sheet metal. Said Board shall be comprised of a representative chosen by bocal 28, a representative chosen by bocal 28, a representative chosen by the Administrator, and a representative chosen by the plaintills and the State Division. Said Board shall act by majority vote and shall employ the passing grade level developed pursuant to the validation procedures set for in Section 6. All applicants shall be advised of their status by first class mail within 30 days of the test. Applicants sho tail the test shall be advised of their possible cliquidative for advanced standing in the apprenticeship program pursuant to Sections 29 through 32 of the Revised Program or pursuant to a parallel policy adopted by Local 28 and/on the Local 28 Joint Apprentice Committee ("SEC").

II. (a) All qualified applicants who pass the test and are physically fit to perform sheet metal work shall

of the rest unless the applicant elects to defer selects on parallel policy adopted by Local 28.

- (b) To the best of their ability the parties and the Administrator shall endeavor to set forth on the approximation form the most accurate estimate of the capicaent opportunities available in the industry.
- established a program for admission to Local 28 journe/mon membership of persons who have had four years experience, obtained in the United States or chewhere, in sheet metal work or employment reasonably related or similar to sheet metal work, including experience in the Armed Forces, or vocational training related to the skills of a sheet metal worker persons eligible for admission under this program must,
 - the counties of New York City, or
 the counties of Nassau (N.1.), Suffolk
 (N.Y.), Westchester (N.Y.), Bergen (N.J.),
 Passaic (N.J.), Essex (N.J.), Union
 (N.J.), or Hudson (N.J.) for six (6)
 months prior to application; and
 - b) be age of 18 or over; and
 - c) be physically fit to perform sheet metal work; and
 - majority of a board of three members
 knowledgable in sheet metal work,
 comprised of a representative chosen
 by Local 28, a representative chosen
 by the Administrator, and a representative chosen by the plaintiffs and the

State Division that the applicant has the requisite sheet metal experience; and

e) be a citizen or lawful permanent resident alien legally entitled to work in the United States.

The Administrator, after due concultation with all the parties, whill establish procedures for application to this program, for investigation and verification of the criteria set forth in subsections (a) through (e), and for the timing and conditions of admission. Appropriate publicity for the program shall be undertaken at the direction and with the approval of the Administrator.

13. a) Upon proper application, a non-white eligible for admission to journeyman membership in Local 28 pursuant to Sections 5 through 12 or Section 31 (e) of this Revised Program may request of Local 28's Executive Board that the Local 28 initiation fee be reduced pursuant to the provisions of Paragraph 22(d) of the Order and Judgment. Within 5 days of receipt of such application, the Local 28 Executive Board shall render a decision on the application in writing and notify the applicant, the Administrator, and the parties of the disposition of the application (the not rication to the Administrator and the parties shall include the name and address of the applicant). If such application is denied in whole or in part, or is not acted upon within five days of its receipt by the Executive Board of Local 28, an application may be made to the Administrator who shall either grant or deny the request in writing after duly considering all the factors set forth in Paragraph 22(d) of the Order and Judgment. In considering such an application the Adminintrator may require the submission of such intormation, documents, or other data from either Local 28 or the applicant as he deems necessary.

b) Upon proper application a non-write offgible for admission to journeyman sambership in Leval 28 par munt to Sections 5 through 12 or Section 31(e) may request of the Local 28 Executive Board that payment of the Local 28 initiation fee commence with employment and be payable on a pro rated basis, each payment not exceeding 10% of the net pay check, and payable only during pariods of employment until the fee is paid. Within 5 days of the receipt of such application the Local 23 Executive Board shall render a decision on the application in writing and notify the applicant, the Administrator, and all parties of the disposition of the application (the notification to the Administrator and the parties shall include the applicant's name and address). If such application is denied in whole or in part or not acted upon within 5 days or its receipt by the Executive Board of Local 28, an application may be made to the Administrator who shall either grant or dony the application in writing. The decisions of the Executive Board of Local 28 and the Administrator shall be made having duly considered the financial circumstances of the applicant.

to Section 13 has been pending with the Administrator for more than 5 days a non-white eligible for admission to journeyman membership in Local 28 pursuant to Sections 5 through 12 or Section 31(e) of this Revised Program shall be admitted conditionally to journeyman membership upon payment of \$56 dollars and one month's dues pending the determination of the Administrator which shall be made within 30 days of the date of the application to the Administrator. During such conditional membership an applicant will be entitled to all the rights and privileges of regular journeyman membership.

b) If a conditional member is terminated without becoming a regular journeyman member of Total 28 he

any month in which he was not employed and, if he was not employed during his conditional membership, he shall also be entitled to a return of any payment made toward the initiation feet.

- 15. The granting of any application pursuant to Section 13 shall not diminish any rights or privileges according to journeyman membership in Local 28.
- Ecetions 5 through 11 shall be permitted to defer such admission for up to twelve months from the time he is first entitled to be admitted. During such period, a person who has elected to defer may apply to the Administrator for further deterral of admission, and upon a showing of good cause, the Administrator may continue such determent for such time as the Administrator shall determine. It an applicant invokes his right of deferral he shall be admitted, on the same terms and conditions as he was previously entitled, within 15 days of written notice to Local 28 that he seeks to be admitted, however, upon good cause shown by the applicant, the Administrator may direct Local 28 to admit the applicant in less than 15 days.
 - 17. Local 28 shall issue "permits" or "identification slips" only with the express written consent of the Administrator, and pursuant to Paragraph 22(r) of the Order and Judgment.

Apprentice Program

of tour years duration or less. The terms and conditions of the apprentice program shall be as set forth in the Collective Bargaining Agreement ("Standard Form of Union Agreement"... between Local 28... and Sheet Metal Contractors"), the Local 28 Joint Apprenticeship frust and Indenture, and

the rules and regulations thereunder except as modified by
the order and Judgment, the provisions of this Revised
Program, or order of the Administrator pursuant to his powers
under the Order and Judgment and this Revised Program.

- apparentices by February 1977 and another class of apprentices (in a number to be determined as set forth in subsection (b) below) by July 1977. The JAC shall indenture two classes of apprentices each year up to and including July 1982; the classes shall be indentured in February and July of each year.
- b) Upon consideration of the goals of this Revised Program, and the availability of employment opportunities in the industry, the JAC shall forward its recommendation of the number of apprentices to be indentured in each class, no later than 90 days before each class is indentured, to counsel for the parties and the Administrator. Such recommendation shall be accompanied by a report setting forth the basis for the recommendation. Any objections to the recommendation shall be filed with the Administrator no later than 15 days after receipt of the JAC's recommendation and report. The Administrator shall review the recommendations and objections, if any, to determine if the action taken by the JAC is in accord with the goals and objectives of the Revised Program. Upon a finding the the JAC's recommendation does not meet the goals and objectives of the Revised Program the Administrator shall render his determination as to the appropriate number of apprentices to be indentured. The Administrator shall render his determination within 20 days after the date for filing objections.
 - c) The numbers of apprentices to be indentured shall include those apprentices admitted with advanced standing.

- a criterion for employment, and apprentices may be rotated for employment where necessary and feasible pursuant to subsection (c) of this section.
- apprentices with classroom instruction, including evenings and Saturdays where necessary, during periods of unemployment, and shall credit such hours toward fulfillment of apprenticeship requirements. The JAC may authorize the accelerated advancement or graduation of any apprentice as it deems proper.
- c) The JAC shall establish an employment referral system which shall incorporate the following elements:
- (i) A list of all apprentices shall be established in three groupings. Group one shall contain apprentices in terms 1, 2, 3; Group two shall contain apprentices in terms 4, 5, 6; Group three shall contain apprentices in terms 7 and 8.
- prentice of the number of manhours worked within each group and the JAC shall refer out apprentices in inverse order to the number of manhours worked (so that apprentices with the lowes, number of manhours shall receive referrals first).
- (iii) To the extent feasible the JAC shall rotate the groupings to insure that no one grouping, or persons therein, receive a disproportionate amount of work.
- (iv) The JAC shall provide counsel for the parties and the Administrator with monthly reports. Such reports shall include but not be limited to: A) all apprentices by name, ethnic status, term, grouping, number of manhours worked, and name of contractor(s) that the apprentice is assigned to; and B) summary of manpower reports showing the number of journeymen and apprentices working for all employees.

The JAC shall provide commend for all parties and the Administrator with a proposed referral system incorporating the above elements, on or before April 1, 1977.

- d) The JAC shall take all reasonable steps, in addition to those set forth in subsections (a) through (c) of this section, to insure that apprentices receive adequate employment and/or training opportunities. Such steps shall include but not be limited to the following:
- (i) Advising counsel for all parties and the Administrator whenever an employer receives a contract from the City, State, or Federal Government.
- (ii) Advising such employers of their obligations under City Executive Order 71, New York State Labor Law 220e (and=any State Executive Order), and Federal Executive Order 11246.
- (iii) Reporting to counsel for all parties and the Administrator the names of any sheet metal employers which, based upon manhour computations, appears to be out of compliance with the appropriate statute, executive order, and/or rule and regulation.
- (iv) Taking all necessary steps to seek out and aprly for governmental manpower training funds. The JAC shall advise counsel for all parties and the Administrator what actions it is taking in this regard and shall provide a copy of any funding proposal to the Administrator prior to its submission to the funding agency.
- 21. Upon successful completion of the Apprentice Program, apprentices shall be promptly admitted to full journeyman membership upon payment of the balance due of the iniciation fee, if any, which upon application to the Local 28 Executive Board may be paid on an installment basis for good cause shown, and subject to the procedures contained in Section 13.

- be made available to and accepted from any qualified candidate. A qualified candidate is defined as follows: any person who is deemed physically fit for sheet metal work and who had or will have attained the age of 18 years by the date of indenture of the next scheduled apprentice class and who is not older than 25 years of age (for veterans of active military duty the age limit is extended one year for each year of such duty up to the age of 30) and for non-whites not over the age of 35 applying for advanced standing, and who is a citizen or permanent resident alien.
- shall develop a standardized application form for the Apprentice Program. The application form shall include information about the date of the next class of apprentices to be indentured, and shall require only the following information of the applicant:
 - a) Name, address and telephone number;
 - b) Birth date and age;
 - c) Social Security number;
 - d) Extent of education;
 - e) Sex;
 - f) Race or ethnic classification (with a notation that this information is required solely for the purposes of compliance with federal anti-discrimination statutes);
 - g) Military service;
 - h) Convictions and pending criminal charges;
 - i) Citizenship or lawful permanent resident alien status.
- 24. Application forms for the Apprentice Program shall be available at the offices of the JAC during normal business hours and at the offices of the organizations listed

In Appendix A at least 60 days before an examination. Application forms shall be made available by mail upon written request. Completed applications shall be accepted in person or by mail at the offices of the JAC. There shall be a filing fee of no more than \$15.00. Application forms shall be made freely available to any governmental employment office and minority community organizations not listed in Appendix A upon request. The time for filing applications for a particular apprentice test may be closed by the JAC at a reasonable time (not to exceed three weeks) before the date of the examination.

in December, 1977 and at least once yearly thereafter at a date, time and location approved by the Administrator. The test shall consist of the following: (i) a mechanical comprehension test, which has been validated under EEGC Guidelines, similar in substance and scope to the mechanical comprehension test administered by JAC in April 1969, and/or (ii) a spatial relations test, which has been validated under EEGC Guidelines, similar in substance and scope to the stial relations test, which has been validated under EEGC Guidelines, similar in substance and scope to the stial relations test given in December 1975. The Administrator, after consultation with the parties, may apply to the Court to decrease the frequency of the tests consistent with the requirements of the interim goals set forth in Section 2.

b) The JAC may apply to the Administrator to give a basic "reac and follow directions" test which has been validated under EEOC Guidelines and is designed to ascertain an applicant's ability to master and understand those written and verbal instructions, directions, and other communications necessary to participate in the Apprentice Program at the first year level; upon good cause shown, the Administrator shall authorize the administration of such a test as part of the apprentice aptitude test. There shall be professionally developed and validated a qualifying score on

"read and follow directions" test designed to reflect the sinisum ability necessary to participate in the Apprentice Program at the first year level. The JAC may also apply to the Administrator to give a math test as part of the apprentice aptitude test, and such test may be given upon good cause shown. Such math test shall be professionally developed and validated (pursuant to EEOC Guidelines) as to centent and qualifying score in such manner as to reflect the minimum ability necessary to participate in the Apprentice Program at the first year level.

(c) With respect to the apprentice aptitude test which is to be administered in December 1977, on or before May 1, 1977, the JAC shall furnish counsel for the parties and the Administrator with (i) a copy of a report demonstrating the validity of the test and (ii) a copy of the test to be administered, provided that counsel for the parties and the Administrator shall not distribute or disclose the contents of the test to any individual or organization except for the purpose of validation thereof. With respect to all subsequent tests administered pursuant to this section, the JAC shall provide the Administrator and counsel for the parties with the information and material requested in subsections (i) and (ii) herein at least four weeks prior to the schedule date of each test.

26. Within three weeks of the administration of an apprentice aptitude test, JAC shall provide the Administrator and all parties with:

- a) the names, race and ethnic identification, raw scores and rank of all candidates on all tests; and
- b) the mean and r lian scores on all tests of all identifiable racial and ethnic groups among the candidates.

- gations under Section 19, apprentices chosen by means of the apprentice aptitude test shall be selected on the basis of the ranking of scores (highest first) received on the mechanical comprehension test and/or the spatial relations test among all eligible candidates.* If a "read and follow directions" test and/or a math test is administered pursuant to Section 25, then ranking and selection based upon scores on the mechanical comprehension test and/or the spatial relations test shall be from among those applicants who meet or exceed the qualifying score on the "read and follow directions" test and/or the math test.
- may be required to appear for orientation and a physical examination prior to being indentured. The cost of physical examinations are to be borne one half by successful applicants and one half by the JAC. Additional persons may be invited to orientation and a physical examination by Local 28 JAC if that appears desirable. Persons selected in accordance with the above procedures shall be indentured as apprentices unless such indenturing is waived by them, or they are certified physically unable to perform sheet metal work by a medical practicioner licensed in New York State.

Advanced Apprentices

29. There shall be established by the JAC procedures for the admission and advanced placement in the Apprentice Program of non-white apprentices who have experience in sheet metal work or trade education but cannot perform at

^{*} Apprentices chosen for the July 1977 class shall be selected on the basis of ranking of scores received on the spatial relations test MAT 8 and MAT 9 given December 1975.

journeyman level. Applicants for advanced placement shall have at least six months experience in sheet metal work or trade education, be physically fit and shall be not less than 18 years old or more than 35 years old by the date of indenture of the next scheduled apprentice class.

- advanced standing and shall make placement of the appropriate grade level. The grade level assigned shall be conditional for a period to be determined by the Coordinator, not exceeding three months, based upon classroom work and on the job performance. Applicants who challenge the grade level assigned shall be advised of their right to appeal to the Administrator.
- 31. a) The Administrator shall determine the number of advanced apprentices to be admitted from the list resulting from each test, based upon the needs of the Apprentice Program at any given time and the number of applicants eligible for advanced standing as certified by the Coordinator.
- b) Apprentices who meet the requirements of Section 29 shall be selected for advanced standing in the following manner:
- (i) Those whose ranking on the apprentice aptitude examination qualifies them for acceptance into the Apprentice Program pursuant to Section 19 shall be selected in accordance with their ranking and admitted with advanced standing, subject to the number determined by the Administrator pursuant to subdivision (a) of this Section.
- (ii) If there are insufficient apprentices who qualify for advanced standing selected by the procedure contained in subdivision (b)(i) of this section to satisfy the number determined by the Administrator, additional apprentices to reach this number shall be selected in ranked coder, from those who are over 25 years of age and

whose score on the apprentice aptitude examination places them below the number otherwise selected pursuant to Section 19.

- c) The number of apprentices admitted with advanced standing under subdivision (b)(i) of this section shall be included in the number of apprentices selected pursuant to Section 19. The number of apprentices admitted with advanced standing under subdivision (b)(ii) of this section shall not be included in the number of apprentices selected pursuant to Section 19.
- d) An advanced apprentice shall be entitled to all rights, privileges and other benefits including work referral, pay, instruction, and supervision accruing to regular apprentices at the same level of training.
- e) Apprentices admitted with advanced standing pursuant to Sections 29 through 31 who successfully complete the Apprentice Program may make the applications provided for in Section 13 of this Revised Program.
- f) Advanced apprentices assigned for work may be utilized to satisfy City and City-assisted contract requirements for the employment of minority trainees.
- study group program so as to familiarize all applicants for the Apprentice Program with the type of test that they will be given. All applicants shall be notified in writing at least two weeks in advance of the apprentice aptitude test that the study program is available to them. Such notice shall contain the date, time, and location of the study group meetings. The meetings shall be held in the evening after 6:30 P.M. At such time as shall be determined by the Administrator but in no event later than 60 days prior to the test date, the Coordinator shall submit a detailed program including but not limited to teaching methodology, program materials, and the organization of the groups.

Records

33. In addition to any other records or lists required to be maintained under the terms of this Revised Program or the Order and Judgment, Local 28 and JAC, as the case may be, shall maintain separately for whites and non-whites, records and lists containing the following information, beginning with the effective date of the Affirmative Action Program entered on November 25, 1975.

- a) Persons who request an application for or apply to take the 'hands-on' journeyman's test described in Section 5;
- b) Persons who take the 'hand-on' journeyman's test described in Section 5;
- c) Persons who pass the 'hands-on journeyman's test described in Section 5;
- d) Persons who apply for journeyman admission on the basis of experience, described in Section 12;
- e) Persons who are admitted, and those rejected, for journeyman membership on the basis of experience, described in Section 12;
- f) Persons who seek or apply to transfer into Local 28 from an affiliated sister local union;
- g) Persons who inquire of Local 28 about the possibility of transferring into Local 28 from an affiliated sister local union;
- h) Persons who inquire of Local 28 as to the availability of work opportunities with or through Local 28, including but not limited to inquiry about or seeking

Persons who are reinstated to journeyman membership in Local 28 having previously exercised withdrawal privileges.

"permits" or "identification slips";

- i) Persons to whom "permits" or "identification slips" are issued or work opportunities with or through Local 28 are otherwise made available;
- j) Persons who contact Local 28 or JAC seeking sheet metal work;
- k) Persons who are employed as sheet metal workers or apprentices by Local 28 contractors;
- Persons working in sheet metal shops at the time they are organized by Local 28;
- m) Persons who are reinstated to journeyman membership or membership in the Apprentice Program;
- n) Non-whites who apply for advanced standing in the apprenticeship program described in Sections 29-32;
- o) Non-whites who are granted advance standing in the apprenticeship program and the standing granted as described in Sections 29-32;

The records and lists specified in subsection (a) through (o) of this Section shall contain the name, address, race, or national origin, union affiliation, if any, of each individual listed therein, as well as the date of the application, test, inquiry, contact, or employment (and the name of the contractor, whereapplicable), and the disposition with reasons, of each such application, test, inquiry, contact or employment. Copies of these records and lists shall be submitted to counsel for the parties and the Administrator at least once every three months.

Said records and lists may exclude telephonic requests for information. However, individuals requesting information by telephone shall be informed that their requests should be made in writing, and a form for this purpose shall be sent to such individual.

- 34. Local 28 or JAC, as the case may be, shall submit the following data to the Administrator and the parties at the time specified:
 - a) the name and ethnic identity of persons admitted into (i) journeyman status in Local 28 or (ii) apprentice status in the Apprentice Program, within 5 days of such admission;
 - b) on January 1 and July 1 of each year
 the total number of (i) journeyman
 members of Local 28 (as defined in
 Section 2), and (ii) apprentices.
 Such reports shall include the percentage of non-whites in each group.
- all applications and other material concerned with the selection and work records of apprentices. These records shall include but not be limited to an applicant log for each examination showing the name, ethnicity, date of birth of each applicant, dates of completion of each step in the application procedure, and disposition of each step in the application procedure, and disposition of each application. All such records shall be made available for inspection and copying by the plaintiffs and the State Division at reasonable intervals during normal working hours or at other mutually convenient times. In addition, records shall be submitted to the Administrator and plaintiffs as follows:

- a) Prior to each apprentice entrance lest and within 7 days of the closing of the application procedure the JAC shall submit a report including the following information for each person who filed or requested an application for that apprentice examination: name, address, telephone number and race or national origin, if known, for those who request applications.
- b) Within 20 days after indenturing a class of apprentices the JAC shall provide a report of the names and ethnic classification of all persons who were rejected during the application and testing period and the reason therefore and the names of all persons whose application became inactive and the reason therefore.
- c) Every six months subsequent to the indenturing of 1 class of apprentices the JAC shall furnish a report giving the names of all non-white apprentices, the name(s) of contractors to which each was referred and the number of hours worked. Such report shall be a summary of the reports required to be filed monthly pursuant to Section 20(c).
- furnish the names of all non-white apprentices who are dropped from the Apprentice Program. Said information shall be furnished within twenty days from the date action is taken by the Joint Apprenticeship Committee. Said report shall contain the reason why the individual was dropped from the Program and the steps taken by the Joint Apprenticeship Committee to retain the individual in the Program. The report shall also include the training and employment history of the individual while he was in the Program. The Joint Apprenticeship Committee shall furnish the names of all non-white apprentices who leave the Program other than by action of the JAC. Such report shall contain the reason the apprentice has left the Program as ascertained by an exit interview diligently attempted.

Said information shall be furnished within twenty days from the time the JAC is notified that the apprentice has left the Program.

36. All records and lists required to be compiled by this Revised Program shall be maintained for ten years and shall be made available for inspection and copying by the parties and the Administrator on reasonable notice during regular business hours or at any other mutually convenient time without further order of the court.

Advertising and Publicity

- 37. The parties shall use their best efforts to disseminate accurate information to the non-white community of opportunities within Local 28 and the Apprentice Program.
- 38. Prior to each 'hands-on' journeyman's test and apprentice aptitude test, at a time to be selected by the Administrator to insure full coverage and effectiveness, Local 28 (in the case of the 'hands-on' journeyman's examination) and JAC (in the case of apprentice aptitude tests) shall undertake a program of advertising and publicity, under the overall supervision of the Administrator, designed to inform the non-white community in New York City of the date, location, and nature of such examinations, the qualifications therefore and the opportunities available upon successful completion of the test. Additionally, the overall apprenticeship recruiting and publicity campaign shall include a component limited toward advanced apprentices. These campaigns may include print and electronic media, dissemination of material to community, government and minority organizations. The City of New York may provide space and opportunities for such publici v.
 - 39. By April 1977, Local 28 and JAC shall provide to the Administrator and the other parties a written plan of an effective general publicity campaign designed to inform

opportunities in Local 28 and the Apprentice Program as provided in the Order and Judgment and this Revised Program.

The other parties shall have 30 days to comment upon the written plan and the Ac inistrator, having considered all submissions, shall revise the plan if he deems necessary and shall order it into effect by May 1, 1977.

Work Referral

40. The Administrator shall conduct a study of the present Local 28 work referral system as described in the written statement submitted pursuant to Paragraph 21(g) of the Order and Judgment. This study shall be completed by April 1, 1977 and the Administrator shall submit to the parties such recommendations he deems necessary to assure that non-whites do not hear a disproportionate share of unemployment.

Resolution of Disputes

- 41. a) The Administrator shall hear and determine all complaints concerning the operation of the Order and Judgment and this Revised Program and shall decide any questions of interpretation and claims of violations of the Order and Judgment and the Revised Program, acting either on his own initiative or at the request of any party herein or any interested person. All decisions of the Administrator shall be in writing and shall be appealable to the Court.
- b) Any party or any individual affected by this Revised Program may make a complaint to the Administrator within thirty days after the situation complained of arises. The Administrator shall give the parties notice of such a complaint within five days and, where a hearing is in his discretion warranted, expediously schedule such hearing. General Provisions
- 42. Local 28 and the JAC shall post conspicuous notices, in language and at locations approved by the

Administrator, advising individuals of their rights under this Revised Program within 60 days after the Revised Program is approved by the Court.

- 43. Nothing contained in the Revised Program should be construed as preventing the Executive Board from adopting portions of the Revised Program for the benefit of whites and other minorities provided that such plans do not interfere with the operation of this Revised Program.
- 44. Except as modified, changed or amended by the terms of this Revised Program or order of the Administrator, Local 28 and JAC shall not change, modify or amend any aspect of the operation or content of the Apprentice Program, or the conditions or terms upon which an individual shall become a member of the Apprentice Program of Local 28 or entitled to work within the jurisdiction of Local 28.
- 45. At any time, any of the parties herein may apply to the Administrator and then to the Court for the purpose of seeking additional orders to insure the full and effective implementation of the terms and intent of this Revised Program.

Dated: New York, New York December 30, 1976

DAVID RAFF, ESO!

SO ORDERED:

U.S.D.J. 17. 1977.

APPENDIX A

New York State Division of Employment (Department of Labor)
Department of Employment of the City of New York
Buneau of Labor Services of the City of New York
Recruitment and Training Program, Inc.

Fight Back

Asian' Americans for Equal Employment

Black Economic Survival

Regional Neighborhood Manpower Services Centers of New York City

New York City Board of Education (Public High School and Evening Trade Division)

Williamsburg Coalition

New York Urban League

National Association for the Advancement of Colored People

Puerto Rican Community Development Project

National Association for Puerto Rican Civil Rights

Citywide Coalition of Black, Hispanic, and Asians in Construction

New York Project Equality

Commonwealth of Puerto Rico

Opportunities Industrialization Center of New York, Inc.

Bodford-Stuyvesant Restoration Corp.

New York City Human Rights Commission*

New York State Division of Human Rights*

^{*} Send notices of exams, but no bulk application.

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION



LOCAL UNION NO. 28 OF YEW YORK CITY

1790 Broadway at 58th St. AR COLUMBUS CIRCLE 20th Floor New York, N.Y. 10019 Union Office Phone (212) 541-6200 Fund's Office Phone (212) 541-6300

> AFFILIATED N.Y. State AFL & CIO

N.Y. State Building and Construction Trades Council

Building and Construction Trades Council of Greater N.Y.

N.Y. City Central Labor Council AFL & CIO HARRY J. RUECKERT

1863

FIN. SECY-TREAS.

1

September 1, 1976

RECORDING SEC'Y

175-3833 cp

David A. Raff, Esq. 49-51 Chambers Street - Room 220 New York, N. Y. 10007

Re: EEOC and City of New York

Local 638 . . . Local 28, etc., et al 71 Civ. 2877 (HFW)

Dear Mr. Raff:

In accordance with the provisions of Paragraph 38 of the Affirmative Action Program, reported hereinbelow is the census of Local 28's membership as of July 1, 1976:

	White	Non-White	Total	% of Non-Whites
Journeymen	2727	120	2847	4.2%
Pensioners*	259	2	261	.8%
Apprentices	46**	34	80	42.5%

TOTALS

032

156

3188

4 99

*Persons who worked as journeymen prior to retirement as pensioners within last three years.

**Includes ten (10) Orientals.

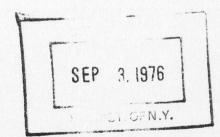
Very truly yours

DANIEL WILTON

Financisl Secretary-Treasurer

DW/fl opeiu/153

cc. Taggart D. Adams, Esq.
Ellen Kramer Sawyer, Esq.
Dominick Tuminaro, Esq.
William Rothberg, Esq.
Sol Bogen, Esq.





Memorandum and Order daka July 7, 1976

1864

M. Coise 70-1624 mfB

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, and THE CITY OF NEW YORK,

Plaintiffs,

Defendatns. :

- against -

LOCAL 638...
LOCAL 28 OF THE SHEET METAL
WORKERS' INTERNATIONAL
ASSOCIATION, LOCAL 28 JOINT
APPRENTICESHIP COMMITTEE...
SHEET METAL AND AIR-CONDITIONING
CONTRACTORS' ASSOCIATION OF NEW
YORK CITY, INC., etc.,

LOCAL 28,

Third-Party Plaintiff, :

- against -

NEW YORK STATE DIVISION OF HUMAN : RIGHTS,

Third-Party Defendant.

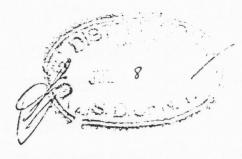
LOCAL 28 JOINT APPRENTICESHIP COMMITTEE,

Fourth-Party Plaintiff,

- against -

NEW YORK STATE DIVISION OF HUMAN : RIGHTS,

Fourth-Party Defendant.



MEMORANDUM

AND ORDER

71 Civ. 2877 (HFW)

Jaffirm the decision of David A. Raff, Esq., Administrator, that a journeyman in good standing of Local 28 is presumptively qualified for a position on an Examining Board to determine admissions to Local 28 on the basis of experience. I have reviewed the record of the hearing before the Administrator, on March 5, 1976 with respect to the qualifications of the two persons named to the examining board. After due consideration and an examination of the exhibits which were received and rejected at that hearing I have come to the conclusion that Mr. William Gonzalez is qualified by experience and education. I have further come to the conclusion that Mr. Charles Saunders is qualified by experience and education but his position as the principal in a sheet metal firm disqualifies him as a member of this board for ethical reason, as well as a real possibility of conflict and bias against the Union of which he is presently a member although his termination is imminent under the By-Laws.

I would therefore direct that the plaintiffs select a member in the place and stead of Mr. Saunders.

DATED:

New York, New York

July 7, 1976

TEMENT LOERKER

- WILLIAM GONZALEZ, called as a
- witness, testified as follows:
- THE ADMINISTRATOR: You are directed to
- answer truthfully.
- EXAMINATION
- BY MR. BOGEN:
- Q You heard me state before that Mario
- Feriello stated that while you worked for Town your
- employment was exclusively in the field, is that a 10
- fair and accurate statement?
- True. A 12
- And that your work with Town was 13
- exclusively with small jobs, two or three men. 14
- Is that a fair and accurate statement? 15
- A Well, right. Two to four men. 16
- And that he considered you at the most 17
- on occasion the lead man and not a foreman. 18
- A Well, lead man and a foreman in a small 19
- shop is the same thing. You said before small jobs. 20
- Town Sheetmetal Works has never had a 21
- 28 man work for them this long because they were not 22
- good enough and they would not hold him for any reason. 23
- That is a fact. You can check their records as
- far as how long a 28 man has worked for them. 25

1	ms Gonzalez 2.
2	I worked for them close to two and a
3	half years. As soon as they come back and they get
4	some work in the city, I will go back with them.
5	As far as running their work, I ran their work.
6	It is more difficult to run small work than it is
7	big work because you have a time limit. You have
8	to be there and on the button.
9	Q During your employment with Town did you
10	receive only journeyman's wages?
11	A Yes, I received only journeyman's wages.
12	Q You never received premium pay or bonus
13	pay, is that correct?
14	A They knocked all that out.
15	Q You never received any additional
16 -	pay or compensation as a lead man, is that correct?
17	A No, I didn't.
18	May I say something for a second?
19	You know the times that we are in,
20	correct? You know we are in tough times in our
21	local as far as employment is concerned.
22	I doubt it very much if very many men can
23	pressure the employer into asking him for premium
24	wages, for over the scale wages at this time.
25	It is not so smart to do something like that when

- 2 you work for a small shop.
- 3. Q You and I can agree that if you are
- working as a journeyman some of the premium pay avail-
- 5 able might not be available and it is not the smart
- 6 thing to do, is that correct?
- 7 A Right.
- 8 Q And the people working as foremen, super-
- 9 intendents and deputy foremen, they are paid additional
- 10 pay, is that correct?
- A I would not know.
- 12 Q You have never worked in the city?
- 13 A I've worked on some of the biggest build-
- 14 ings in the city.
- 15 Q But only for Town.
- 16 A No, for National Sheet Metal as an
- 17 apprentice.
- 18 Q Do you understand or do you know that
- with 55 foremen are paid as a matter of contract
- 20 additional compensation?
- 21 A I have no knowledge of that and never
- 22 called their local.
- 23 Q I read off a little while ago a summary,
- Local 28's Exhibit C, the employer's reports.
- Does it fairly and accurately reflect the

including yourself as one of the two?

Yes.

A

23

- 2 more than two people?
- 3 A How many jobs?
- 4 Q Yes, how many jobs?
- 5 A Maybe four jobs.
- 6 Q All the other jobs were only two people,
- 7 you and another sheet metal worker?
- 8 A Two or three, depending.
- 9 Q I want to get that clear in my mind.
- 10 There were four jobs in which you worked with more
- 11 than another sheet metal worker?
- MR. ADAMS: That is not the question you
- 13 asked him and not the answer he gave.
- MR. BOGEN: I asked him exactly that
- 15 question.
- MR. ADAMS: I want to clarify the record.
- 17 Q Were you confused, Mr. Gonzalez?
- 18 A Ask the question again.
- 19 MR. ADAMS: The question that was asked
- 20 was how many jobs he worked with more than two other
- 21 people.
- MR. BOGEN: And he answered four jobs.
- MR. ADAMS: Now you have asked him another
- 24 question.
- 25 MR. BOGEN: There was a hesitancy in terms

- 3 Q You worked strictly in the field, is that
- 4 correct?
- 5 A Yes.
- 6 Q And you told us during this period of
- 7 time that you worked on only four jobs where there
- 8 were only two men, is that correct?
- 9 A Yes.
- 10 Q The jobs with two men or less meant you
- 11 and one other man or you by yourself, is that
- 12 correct?
- A Right.
- Q With respect to the four jobs that you
- 15 can think of now -- if you can think of any more, let
- 16 me know -- what jobs were they?
- 17 A I have no idea. I have to look into them
- 18 to find out.
- 19 It might have been in Manhattan. It might
- 20 have been in the Bronx. I have no idea. I can't
- 21 pinpoint it.
- 22 Q When was the last time you worked on a
- 23 job where there were more than two men including
- 24 yourself?
- 25 A I have no idea. I really have to look

-	
1	me
4	ms

Gonzalez

~		
2	a m 4-1	o it.

- Q But you finished working for Town in
- 4 January of '76, is that correct?
- 5 A I have no idea. I have to check with
- 6 Town to find out exactly.
- 7 Q On the top of your resume you say from
- 8 1973 to the present and indicating your employment
- 9 with Town.

- When did you prepare the resume?
- 11 A I didn't break it down into months
- 12 because, you see, working for a small shop there is
- 13 a time lapse all the time.
- 14 You are knocked off for a couple of
- 15 weeks and you are put on again.
- 16 Q If you look at your resume you say from
- 17 1973 to the present, the first page.
- I am trying to determine what the word
- 19 "present" is relative to.
- 20 MR. TUMINARO: Isn't this going beyond
- 21 the scope the questions with respect to the foreman?
- THE ADMINISTRATOR: I agree. It is
- 23 irrelevant as to when the resume was prepared.
- MR. BOGEN: I think what you might want
- 25 to do is give me an opportunity to reply.

ms Gonzalez 29
I am trying to get the present identifed
and not in relation to when he last worked.
THE ADMINISTRATOR: He indicated that
he does not recall.
Q You do not know when you did the
four jobs. Can you recall how many men were on
those jobs, the four jobs?
A Some of them were four men.
Q And some of them three men?
A Yes, right. I worked in Staten Island
with four 28 men.
MR. BOGEN: I have no further questions.
THE ADMINISTRATOR: Do any counsel of the
plaintiffs have any questions for Mr. Gonzalez?
MR. ADAMS: I have no questions.
THE ADMINISTRATOR: Mr. Dunbar?
MR. DUNBAR: No.
THE ADMINISTRATOR: Mr. Gonzalez, you
worked as an apprentice sheet metal worker for
National Sheet Metal Works, is that correct?
THE WITNESS: Yes.
THE ADMINISTRATOR: Did you work in the
shop?

THE WITNESS: No, I did not.

1	ms Gonzalez 30
2	THE ADMINISTRATOR: Where did you work?
3 -	THE WITNESS: Out in the field.
4	THE ADMINISTRATOR: Did you have a broad
5	range of experience when working as an apprentice?
6	THE WITNESS: Yes. Everything from the
7	fan room.
8	THE ADMINISTRATOR: You went through the
9	normal four-year apprentice program?
10	THE WITNESS: Yes. That's why I took a
11	course in sheet metal layout in Local 28 so I could
12	have a broader range of knowledge.
13	THE ADMINISTRATOR: Are you talking about
14	what is currently on your resume now involving a
15	course in drafting?
16	THE WITNESS: No, a course in cutting
17	and layout.
18	THE ADMINISTRATOR: That is in
19	addition to that, right?
20	THE WITNESS: Right, and that's the reaso
21	why I took it.
22	THE ADMINISTRATOR: You are continuing
23	to broaden your education according to your resume?
24	THE WITNESS: Yes. Right now I'm
25	currently taking a sketching course.

1	ms Gonzalez 31
2	THE ADMINISTRATOR: Mr. Gonzalez, I have
3	no further questions.
4	Mr. Adams, do you have any questions?
5	MR. ADAMS: No.
6	THE ADMINISTRATOR: I was going to tell
7	Mr. Gonzalez that we are through with him for purposes
8	of questioning.
9	Mr. Adams, you may make a statement.
10	MR. ADAMS: The EEOC would oppose the
11	motion by Local 28 to objecting to the appointment
12	of Mr. Gonzalez as a member of the tripartite board.
13	It is clear to me that we begin with
14	the presumption in favor of Mr. Gonzalez' qualifica-
15	tions for the Board simpl; on the basis that he has
16	graduated and with at least one prize from the four-
17	year apprentice program established under Local 28
18	and the Employers' Association, JAC. In addition to
19	that he is a member now in good standing as a journey-
20	man of Local 28.
21	He has taken at least one further course
22	and completed it satisfactorily, of journeyman training
23	in the evening, I take it, which is set forth in
24	his certificates attached to his resume, the course
25	being in due of and from the a 90-hour course to part

- l ms
- 2 is not qualified to sit and make the criteria and
- 3. set judgments on the work. You evaluate it
- 4 differently.
- 5 THE ADMINISTRATOR: Mr. Bogen, I know what
- 6 your appeal rights are. It is my ruling that there
- 7 has been no evidence adduced before me today that
- 8 would in any way disqualify Mr. Gonzalez from serving
- 9 on this Board.
- MR. ADAMS: Do you make a finding that
- 11 Mr. Gonzalez is knowledgeable in sheet metal work?
- THE ADMINISTRATOR: Knowledgeable
- 13 sufficient to qualify him as a member of the Board
- 14 of Examiners.
- MR. TUMINARO: Do you make a finding
- 16 with respect to the criteria for qualification?
- 17 In other words, is it sufficient for somebody to have
- 18 been a journeyman knowledgeable in sheet metal to
- 19 serve on this board, or is there something more, as
- 20 Mr. Bogen seems to be implying, that the order seems
- 21 to require?
- 22 Are you making any finding with respect
- 23 to that issue?
- 24 THE ADMINISTRATOR: If you so move before
- 25 ma I will make a finding.

- THE ADMINISTRATOR: I will voir dire
- 3 Mr. Saunders.
- 4 Mr. Saunders, you are directed to tell the
- 5 truth in this proceeding.

- 7 CHARLES SAUNDERS, called as a
- 8 witness, testified as follows:
- 9 THE ADMINISTRATOR: Are you a member in
- 10 good standing of Local 28 at this time?
- THE WITNESS: Yes.
- 12 THE ADMINISTRATOR: Do you have anything
- 13 to rebut that with? It means that he has not been
- 14 expelled.
- MR. STACK: The definition is that his
- 16 dues be paid to and for the current month. That is
- 17 the definition of good standing.
- MR. BOGEN: There is a dipute with respect
- 19 to his corporate position and whether or not he can
- 20 continue to remain a member in good standing.
- I want to develop what we have here and if
- 22 you pass upon it and rule otherwise, you rule other-
- 23 wise.
- 24 THE ADMINISTRATOR: The question
- 25 has been raised as to whether or

- 2 not Black Iron has been doing any work and relevant
- 3 to whether Mr. Saunders has the necessary qualifications
- 4 to be a member of the board.
- 5 . Mr. Saunders has indicated that he is a
- 6 Local 28 member in good standing and creates the
- 7 presumption that he does have the experience.
- 8 If you wish to address yourself to attacking
- 9 that presumption, I will be willing to let you proceed.
- MR. TUMINARO: Do we have the resume in
- 11 evidence?
- 12 THE ADMINISTRATOR: Do you wish to intro-
- 13 duce the resume?
- MR. BOGEN: Sure.
- THE ADMINISTRATOR: The resume of Mr. Charlie
- 16 Saunders will be Local 28's Exhibit D.
- 17 (Local 28's Exhibit D was marked.)
- xx 18 MR. BOGEN: I would like to pursue the
 - material with the Black Iron and examine Mr. Saunders
 - 20 as to that aspect of it to develop the relationship
 - 21 between Mr. Saunders and the local at this time.
 - 22 THE ADMINISTRATOR: I will permit it on a
 - 23 limited basis. I may cut it off at any point.
 - MR. BOGEN: The records indicate, as I
 - 25 said before, that Black Iron was operating for the

	1879
1	ms Saunders 48
2	limited period of three weeks in '75.
3	MR. ADAMS: Will you identify the records,
4	please? What are these records?
5	MR. BOGEN: The records of the Pension Fund
6	Welfare Plan and Welfare Fund.
7	I would like to have that marked and
8	introduced as Local 28's Exhibit 28-E.
9	THE ADMINISTRATOR: Is there any objection?
10	MR. TUMINARO: I object to it on relevancy.
11	If Mr. Bogen establishes that it is relevant and if
12	you find there is some connection, then it can be
13	accepted into evidence. Until then, I do not see
14	why it ought to be.
15	MR. DUNBAR: I join Mr. Tuminaro. I ask
16	that you rule on what this is relevant to, whether it
17	is relevant to his experience or his status as a
18	journeyman.
19	THE ADMINISTRATOR: Mr. Bogen has indicated

- that it is relevant to the corporate entity, Black Iron, 20
- 21 to Local 28.
- I will accept it with reservation subject 22
- to withdrawal if no connection is made. 23
- MR. ADAMS: I take it that what the records
- reflect are payments by Black Iron Sheet Metal to

			1880
		1	ms Saunders 49
		2	various Local 28 funds; is that correct, Mr. Bogen?
		3 -	MR. BOGEN: Yes. I think the document
7		4	will speak for itself.
Ö		5	THE ADMINISTRATOR: This is accepted
		6	subject to connection as Exhibit E.
		7	(Local 28's Exhibit E was marked.)
	xx	8	MR. BOGEN: At this time I would like to ex-
		9	amine Mr. Saunders with respect to the documents and
	*	10	the items that I have before me.
		11	THE ADMINISTRATOR: Mr. Saunders, you are
		12	directed to tell the truth in this matter.
		13	Mr. Bogen.
		14	EXAMINATION
		15	BY MR. BOGEN:
		16	Q Mr. Saunders, your resume indicates that
		17	Black Iron was organized or commenced in January of
		18	'74, is that correct?
		19	A It says that I started working actively
		20	with it in January of '74.
		21	It was incorporated in February of '73.
		22	Q Your first connection was January of '74?
		23	A No, not my first connection. The first
)			

24

thing I did was to try to do some business, do you

understand I rean:

- 2 This is inconsistent. It is relevant in our mind
- 3 as to the kind of work he did. We have the
- resume as field superintendent at Key Delta Corp.
- 5 Based upon what we were able to deduce, this is
- 6 introduced to show that he was not a field super-
- 7 intendent and the kind of work he was doing at the
- 8 time.
- 9 THE ADMINISTRATOR: Mr. Saunders, on your
- resume you indicated 10/'73 to 12/'73 that you were
- field superintendent for Key Delta Corp.
- Mr. Bogen has raised a question whether
- you were employed during that time and what position
- 14 you were employed in.
- Mr. Saunders, does your resume accurately
- 16 reflect your work history or is there a modification
- 17 you wish to make at this time?
- THE WITNESS: I worked all the way to the
- end of '73 for them. The beginning date might be
- 20 different. A company does not always do or have a
- 21 running job and the union is only concerned with when
- 22 you get payments as a mechanic.
- The only concern is for a mechanic's wage
- 24 and no report for that is required. A lot of that
- 25 money is taxable and paid outside and over and above

- 1 ms
- what the unions are required.
- 3. Also I can send you my business cards with
- my name printed on them and with my symbol stating
- 5 that I was a field superintendent. Along with my
- 6 responsibility to them was not only to, you know,
- 7 supervise the working being done in the field but also
- 8 to go around and meet people and things of that nature
- 9 which had nothing to do with Local 28. That is what
- 10 I have to say.
- 11 You can introduce all the records and
- they don't indicate any differentiation in pay and there
- 13 no reason why it should. I might like the power of
- 14 being field superintendent and do it for mechanics
- 15 wages. I don't think that has any bearing on
- 16 Mr. Gonzalez and myself.
- THE ADMINISTRATOR: Restrict your remarks
- 18 to yourself, Mr. Saunders.
- Mr. Bogen, do you have any remarks in this
- 20 area?
- MR. BOGEN: No. I want to note Mr. Saunders
- 22 understanding of the obligations that he stated for the
- 23 record are incorrect.
- 24 You have a copy of the collective bargain-
- 25 ing agreement that provides to that extent that any

- 2 in good standing. There are other factors and one
- 3. is that he has worked exclusively in the field and
- 4 not in the shop.
- THE ADMINISTRATOR: Mr. Bogen, I am not
- 6 going to permit you to pursue that.
- 7 MR. BOGEN: Cut me off.
- 8 THE ADMINISTRATOR: I am going to.
- 9 I make the finding that Mr. Saunders has
- 10 presented a sufficient background to meet the pre-
- 11 sumption and that you have presented nothing to
- 12 rebut that presumption.
- Mr. Saunders is qualified to sit on the
- 14 Board. I am terminating these proceedings. If
- 15 you wish to appeal my decision to the judge, you have
- 16 ten days from the time that the record is prepared
- 17 in this matter to appeal my decision to the judge.
- MR. BOGEN: I have no objection to your
- 19 ruling and closing and cutting me off. I have very
- 20 serious objections to your setting artificial and
- 21 arbitrary time schedules with respect to my right to
- 22 appeal.
- 23 I think we are in a framework that puts
- 24 an undue burden unnecessarily on me. At this point
- 25 I do not know whether we will appeal or not.

- Local 28's Land Exhibit A 3/5/11 1884 KIMI. PENNSYLVANIA 6-7570 . (AREA CODE 212) SOL BOGEN ATTORNEY AT LAW ONE PENN PLAZA, NEW YORK, N. Y. 10001 March 2, 1976 David A. Raff, Esq. 49-51 Chambers Street - Room 220 New York, N. Y. 10007 EEOC and City of New York Local 638 . . . Local 28, etc., et al 71 Civ. 2877 (HFW) Dear Mr. Raff: This is an application on behalf of Local 28 for a formal hearing to determine whether the two members (Charles Saunders and William Gonzales) of the Examining Board proposed, respectively, by the Plaintiffs and the Administrator are qualified to be members of the Board or should be removed. Based upon the resumes submitted on February 24, 1976 on behalf of Messrs. Saunders and Gonzales and the information that could be developed therefrom, it appears that neither designee may be qualified or sufficiently qualified by education, training or employment for such positions. It is respectfully requested that the hearing be held as : on as possible and that Messrs. Saunders and Gonzales be went for examination and be afforded an opportunity to - Lit additional information or material. Very truly yours, SOL BOGEN r. D. Adams, Esq. france Sawyer, Esq. ".". 11.4.), Esq.

3/5/76 Exhibit B

Synopais of Resume of William Gonzalez

1883

3765 18th Avenue hone: 435-5184

JOBOBJECTIVE Member of Board of Examiners

EMPLOYMENT

1973 - Present Town Sheetmetal Works Inc.

246 Broadway

Garden City Park, New York 11040

Working Sheetmetal Foreman

1969 - 1973 National Sheetmetal Works

284 Siegal St.

Brooklyn, New York 11206

1905 - 1969 Boston Shoes Inc.

133 Nassau St. New York, New York

Shoe Salesmen

In charge of sales and salesmen

EDUCATION

HIGH SCHOOL Washington Trving High School(Evening High School)

OTHER Completed a four year term in Sheetmetal as an Apprentice, completed a course in Sheetmetal Cutting and Layout with Union Local #28 Evening

Journeyman Training Program.

Completed a course in Business Management Training

Program.

CURRENT Taking a course in Sheetmetal Drafting and Design

with Union Local #28 Evening Journeyman Training

Program.

Continuous self-study in construction procedures,

(Builder Journals, etc.)

PERSONAL

HORN 11/17/45, San Juan, Puerto Rico

APPEARANCE Height 5'113", Weight 160 lbs.

MARITAL STATUS Married, Pat Evers

MEALTH Good, No Physical Limitations

FINANCES Good Order

RESIDENCE Rent

HOBBIES Art, Drawing and Oils, Ice Skating

EMPLOYMENT

1973 - Present Mario Feriello, Town Sheetmetal Works, Inc.

I was employed as a sheetmetal worker in 1973, and by the end of 1974 I had been given some supervisory responsibility. As a result of efficient discharge of duties, I was promoted to foreman. This involved technical briefings with management, engineers and representatives from other crafts regarding the progress of the work and craft responsibilities. I selected my sheetmetal workers and was completely responsible for the layout of the entire operation from start to finish. Frequently, I had to make changes on the blueprints and order new pieces from the shop. I'm accustomed to directing personnel. I'm able to get maximum effort from the workers under my supervision.

1969 - 1973 National Sheetmetal Works

I served my apprenticeship with this shop, and although apprentices have few responsibilities, I fulfilled all duties related to my apprenticeship. As a result of my good record, I was given an award for outstanding achievement in developing my skill as a sheetmetal worker.

1965 - 1969 Joe Mizarchi, Boston Shoes, Inc.

I started as a part-time stock boy while in high school after which I was put on full time as a salesman. After a few years, I was put in charge of sales and sales personnel. I had the responsibility of pushing the old styles and bring on the new ones. I also was responsible in seeing that other employees did the same. I made a reasonable income. I terminated my employment with this firm to work in the sheetmetal trade.

EMEST MEVAL WORKERS (LOCAL UNIO) Total Wages reported under Item 23	1		er's Contribution		MION NO. 281 PENS	TVNU
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liem 2. Employer's Contribution, 3% of Item 3.	:	14. Total o	r Remittance		wh	
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NUMBER OF EMPLOYEES LISTED	ON THIS FORM AND CON-	SHEET M	ETAL WORK	ERS (LOCA	L UNION No. 28	VACATION PLAN
I certify that the information container	d in this report and the attached	Signature	Ma	£ 6 21.11	1000	1.01
schedule is true and correct; that the was to Sheet Meral Workers and Apprentices i for the period specified	tes reported represent all wages paid in the employ of the named Employer	T. B.L.	Lucie		Tate	8/9/23
FMPIOY	ER'S REPORT OF W.	AGES PA	AID TO A	ALL LC	CAL 28	<i>f f</i>
	HEET METAL WORK	ERS ANI	APPRE.	NTICES		/
Report for Month of JUL	1873 20. LAS		L DATE W		ONTH Z	13/12
Employee's Social Security Account Number (21)	Name of Employee (Type or Print) (22)		Base Wage (Exclude Vacati (2J)	Paid on Wages)	Total Number of Paid Work Hours (Omit bractions)	Vacation Wages (See Instructions) (25)
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Exhibit C

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1. Total Wages reported	under tiens 28	377.5%	11. Employ	er's Contribution 3%	of lieto		777
2. Total of paid hours. (Rep	orted under Item 24)	05c + / /	12. Total o	(Same boors	as item	_x 25c +	
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8. Employer's Name, A	ddress and Identificati	on Number.		SETAL WORKERS (LO			9/71
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246 BROADWAY				ements-(Must be expl	ained. Se		-01
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NUMBER OF EMI	*)	ON THIS FORM AND CON-		mari	<i>i</i>	7./1-	12)
10. I certify that the	information contained	d in this report and the attached ies reported represent all wages paid	Signature	781	, /	4/1-	~/./.
to Sheet Meral Worl	kers and Apprentices is	n the employ of the named Employer	Title (X X (1)/1	<u>}'</u>	Date	1/4/23
SCHEDULE A	_EMPLOY	ER'S REPORT OF WHEET METAL WOR	VAGES P.	AID TO ALI	LOC	CAL 28	
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19. Report for Mo	nth of AUG	197320. LA	ST PAYRO	LL DATE WITH	IN MC	Total Number of	/ 100-1-2
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THIS FORM MUST SE MAILED TO THE CIFICE OF THE FUNDS AND PLAN ON OR SEFORE THE TENTH (10th) DAY OF THE MONTH WHICH THIS REPORT COVERS. THIS REPORT MUST BE SUBMITTED EVEN THOUGH NO WAGES HAVE NOTED ABOVE.

2M.8-79-L8

Draw a separate check for this amount payable to BIERT METH. WORKERS (LOCAL UNION No. 28) WELFFARE FUND BIERT METH. WORKERS (LOCAL UNION No. 28) PENNION FIN BIERT METH. WORKERS (LOCAL UNION No. 28) PENNION FIN SHEET METH. WORKERS (LOCAL UNION No. 28) PENNION FIN SHEET METH. WORKERS (LOCAL UNION No. 28) PENNION FIN SHEET METH. WORKERS (LOCAL UNION No. 28) VACATION FUND 15. Imployed's Contribution 3 to of them 3 16. Total of paid boars 3 17. Adjustments—(Must be explained See Instructions) 5 18. Total of remittance must agree with intal of tiem 15 to and total of tiem 25 to beed in the information contained to this report and the attaches to beed a true and correct that we want reported represent all waxes had to beed to true and correct that wave the control represent all waxes had to beed to true and correct that wave the control represent all waxes had to beed to true and correct that wave the must appear to be the correct specifies. SCHEDULE AEMPLOYER'S REPORT OF WAGES PAID TO ALL LOCAL 28 SHEET METAL WORKERS AND APPRENTICES (See Instructions from No. 28) Page Mark Payable to Total No. 28 (See Instructions from No. 29) Page Mark Payable And Payable of Total No. 29 (See Instructions from No. 29) Page Mark Payable And Total No. 29 (See Instructions from No. 29) Page Mark Payable And Total No. 29 (See Instructions from No. 29) Page Mark Payable And Total No. 29 (See Instructions from No. 29) Page Mark Payable to No. 29 (See Instructions from No. 29) Page Mark Payable to No. 29 (See Instructions from No. 29) Page Mark Payable to No. 29 (See Instructions from No. 29) Page Mark Payable to No. 29 (See Instructions from No. 29) Page Mark Payable to No. 29 (See Instructions from No. 29) Page Mark Payable to No. 29 (No. 20) Page Mark Payable to No. 20 (No. 20) Page Mark Payable to No. 20 (No. 20) Page Mark Payable to No. 20 (No. 20) Page M	For	Total Wages Total of paid Total Wages Total Wages item 2	reported u i bours (Report subject t Contributio d bours	ader Item 23 ted under Item 24) to Contribution Item a, 3% of Item 3.	50. 28) WELFARE FUND 577 77 50 8 275 1 plus 60060 1 7002	11. Employ 12. Total of	er's Contribution 3% If paid bours Seme bours ments—(hiust be explicit Remittance)	of Item	3. \$ 25c \$	18031 13751 31771
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1 certify	that the it	formation containe	d in this report and the attached	Signature	Mari	di de	621000	
to Sheet h	a true and c	re and Apprentices i	tes reported represent all wages paid in the employ of the named Employer	True	Bellux	4	Dare	6/3/74
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L Employer's Name, Address and Identific	ation Number.	SMEET METAL WORKERS (LOCAL	. /
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O. I certify that the information contain	ned in this report and the attached	Signature: Percen	· Winds
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EMPLO		AGES PAID TO ALL LO	OCAL 28
		ERS AND APPRENTICE	
19. Report for Month of	11 1974 20. LAS	(See Instructions Item No. 20) T PAYROLL DATE WITHIN N	MONTH 7/34/71
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27. Has a change of Ownership, or other Transfer of the Business taken piace during the month

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Exhibit D

Charlie Saunders 1775 7th Ave New York, N.Y. 10030

Age 29

Objectives: To work in the Sheetmetal trade to promote working relationship emong workers and to improve the standing of workers in general

Experience :

1/74 - present Co-owner of Black Iron Sheet Metal Corp. Inc.

10/73 - 12/73 Field Superintendent for Key Lelta Corp.

9/71 ~ 10/73 Shop Steward for Local Union #28 and Federal Sheet Metal at State Office Bldg, Harlen, N.Y.

9/70 - 9/71 Forman for Brendt Corp.

12/68 - 9/70
Deputy Foreman for ABT Corp. (Alpine, Brooke, Triangle)
at World Trade Center

11/65 - 6/68
Apprentice for Alpine Sheet Metal Works Inc.

Education :

Graduate : Charles Evans Hughes High School

Attended : Branx Community College

Graduate : Sheet Metal Apprentiseship School

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F (REJECTED) 1919 BJAI BLACK IRON SHEET METAL WORKS, INC. c/o R.T.P. 162 5th Avenue, New York City 10010 (212) 691-0660 October 1, 1975 Sheet Metal Workers (Local Union #28) Sub Plan 1790 Broadway, New York, New York 10019 35 Attention: Mr. William Greenberg 10/28/75 Dear Sir: Thank you for your letter of September 25, 1975, regarding contributions to the welfare pension and vacation TIGIT funds of Local Union #28. According to your letter, you stated that we have not m. made payments for 7/18, 7/25, 8/1, 8/8, 8/22, 8/29, 9/5, GRIBCT 9/15 and 9/12, and you are correct. Throughout this entire period we have received one job : Cannanan House, 118th Street and Fifth Avenue. Three days were spent in sketching this job and no prints have been returned for approval of fabrication. Therefore we don't owe any contributions! However, if we are going to file weekly reports, we request that some should be sent to us. If there is any other way we can be of service to you in this or any other related matter please do not hesitate to write or call. Sincerely, Charlie Saunders Director CS/pw cc: Ed Stack Steven Klebanoff Sol Bogen, Esq. William Rothberg Esq. Charles Heim Edna Paskoff

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27. Has a change of Ownership, or other francisc of the pushess that the first or our	M TOTAL	5 FOR TH	IIS PAUL			Account of the second of the s				

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THIS FORM MUST SE MAILED TO THE OFFICE OF THE FUNDS AND PLAN ON OR PEFORE THE YENTH (19th) DAY OF THE MONTH FOLLO
OF THE MONTH WHICH THIS REPORT COVERS. THIS REPORT MUST BE SUBMITTED EVEN THOUGH NO WAGES HAVE BEEN PAID DU
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achedule to Sheet	is true and	correct; that the wage	in this report and the attached is reported represent all wages paid the employ of the named Employer	Title	1		11 3	1/1/7	0
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19. Repor	t for Mor	nth of FEB	20. LAS		LL DATE WITH		ОМТН		Xelidina
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			nsfer of the Business taken place du		(54)	91 801	and the second s	yes, attach de-	
			CE OF THE FUNDS AND PLAN ON VERS. THIS REPORT MUST BE SUI						

AFFRENTICE

INSURANCE RECORD

	CLOSED		DAYS	DATE
A. & SOPENED		wks	DAYS	12/1/66
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12/11/66 ACTION CLASS

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CHARLES A. SAUNCERS 203 W. 120TH ST. N. Y. N. Y. 10027

103-31-7J47 5952

DATE	ACTION	CLASS
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INSURANCE RECORD A 8 S CPENED CLOSED WKS DAYS ASSOCIATION ASSOCIA

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CHARLES A. SAUDDERS 246 W. 15JTH ST. NEW YORK, N.Y. 10039

103-31-7047 5952

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INSURANCE RECORD

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Form 280 A-Affidavit of Service by Mail Rev. 12/75 AFFIDAVIT OF MAILING CA 76-6003 State of New York County of New York Marian J. Bryant being duly sworn, deposes and says that she is employed in the Office of the United States Attorney for the Southern District of New York. That on the 18th day of February 1977 s he served a copy of the within Supplement to the Second Joint Appendix by placing the same in a properly postpaid franked envelope addressed: Sol Bogen One Penn Plaza New York, New York 10001 Rosenthal & Goldhaber 44 Court Street Brooklyn, New York 11201 W. Bernard Richland City of New York Corporat on Council Municipal Building New York, New York 10007 And deponent further says s he sealed the said envelope s and placed the same in the mail chute drop for mailing in the United States Courthouse Annex, One St. Andrews Plaza, Borough of Manhattan, City of New York. Marian L. Bryant Sworn to before me this 18th day of February ,19 77 PAULINE P. TROLA Notary Public, State of New York No. 31-4632381 Qualified in New York County Commission Expires March 30, 1978